

← TWO BASIC KINDS OF CASES →

 **Access**

Usually During Road Improvements

 **Access
Management**

Usually During Permit Process

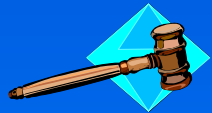
BASIC CONCEPTS



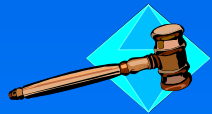
POLICE POWER



EMINENT DOMAIN



INVERSE CONDEMNATION

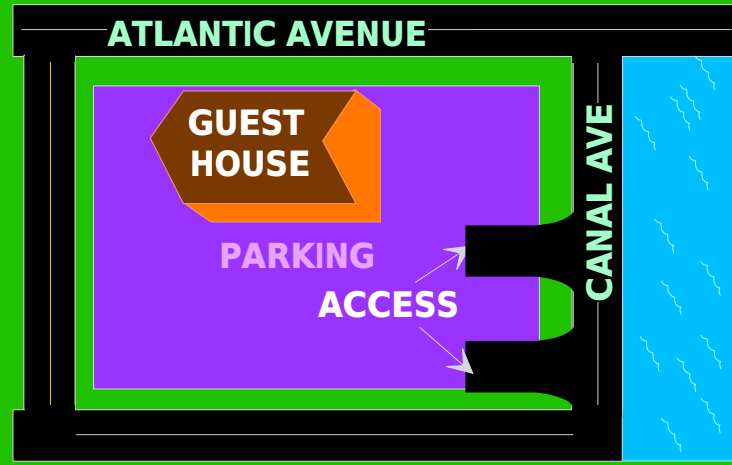


"BUNDLE OF RIGHTS"

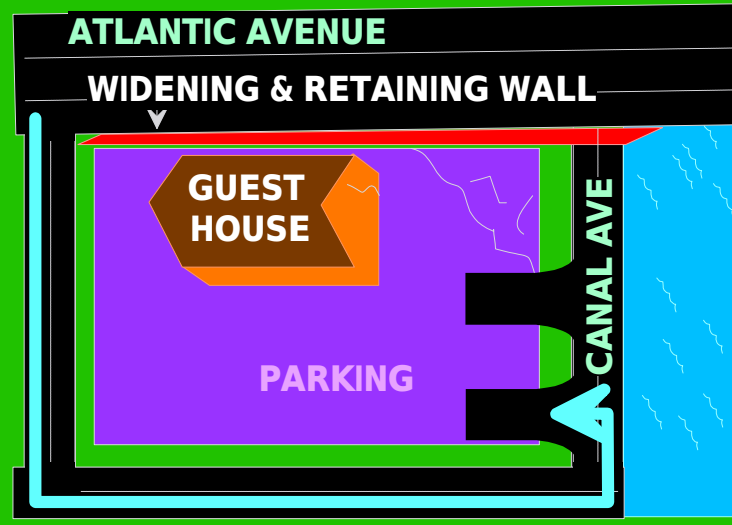
LEGAL CONSIDERATIONS

Circuity, by itself, is not compensable.

BEFORE

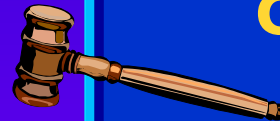


AFTER



WEIR

- Resurfacing & widening of Atlantic Ave and replacement of bridge.
- Retaining wall built along Atlantic Ave. - destroying direct access and damaging land and building. Removed view of the waterway.



COURT: There was reasonable access from Canal Ave. A taking did not occur.

✦ Suitable access is decided on a case-by-case basis.

Weir v. Palm Beach County, 85 So. 2d 865 (Fla. 1956)

LEGAL CONSIDERATIONS

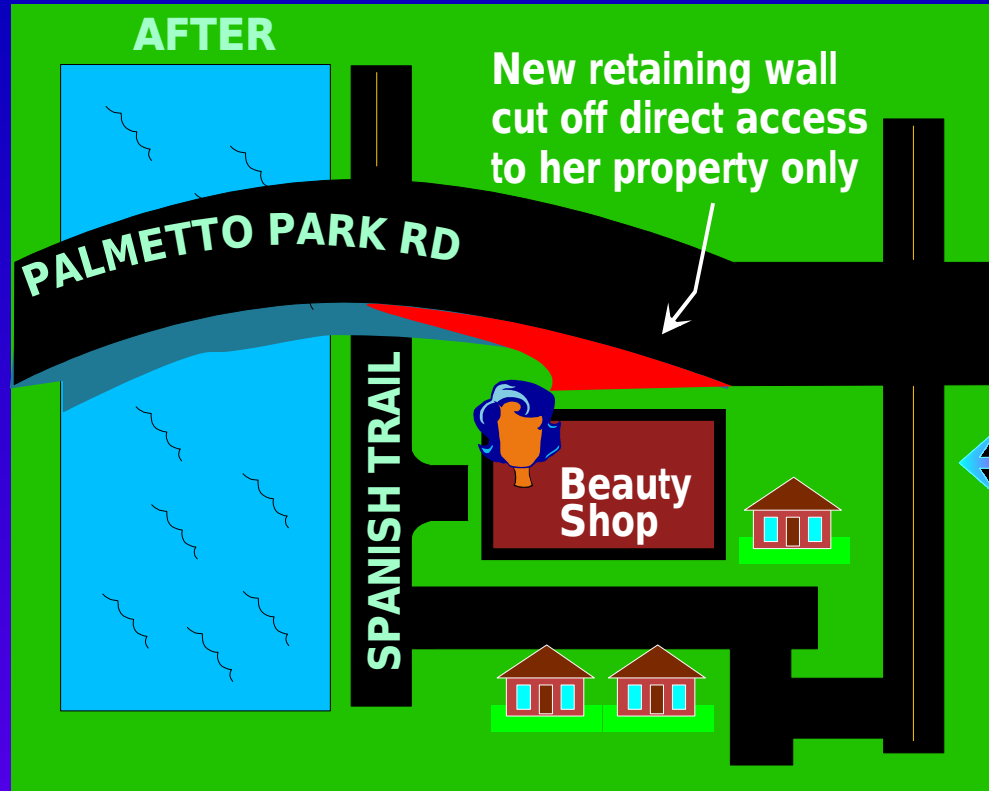
**Business
Damages**

TESSLER



- Beauty shop in home.
- Retaining wall eliminated direct access to Palmetto Park Road.
- Sign no longer visible from Palmetto Park Road.
- Customers required to travel 600 yards through residential neighborhood.

Palm Beach County v. Tessler, **538 So. 2d 846 (Fla. 1989)**



TESSLER



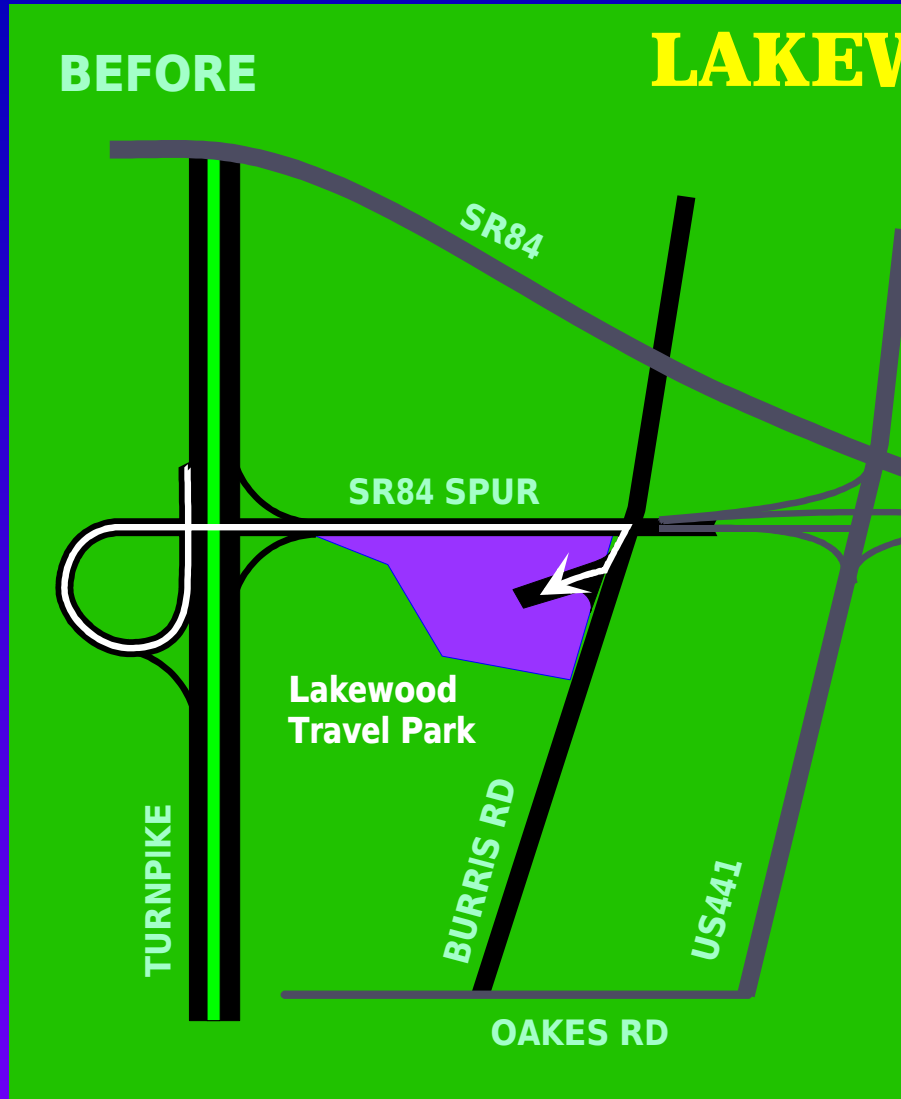
COURT: A taking occurred

❖ The loss of the most convenient access is not compensable where other suitable access continues to exist.

❖ When governmental action causes a substantial loss of access to one's property, even though there is no physical appropriation of the property itself, there is a right to be compensated. A complete loss of access is not necessary, but access must be substantially diminished.

BEFORE

LAKEWOOD TRAVEL PARK



- Construction of New I-595.
- FDOT did not touch property or modify driveways.
- Travel park lost most direct access from three major highways.
- New route required travel through industrial neighborhood.
- Complicated access route.

Before: 1/4 mile to access
After: 2.44 miles to access

FDOT v. Lakewood Travel Park, Inc., **580 So. 2d 230 (4th DCA)**,
rev. denied **592 So. 2d 680 (Fla. 1991)**



LAKEWOOD TRAVEL PARK

(This case has been disapproved
and is no longer good law)

~~COURT: A taking occurred~~



First time a taking of access
was found without any direct
modification to road abutting
the property.

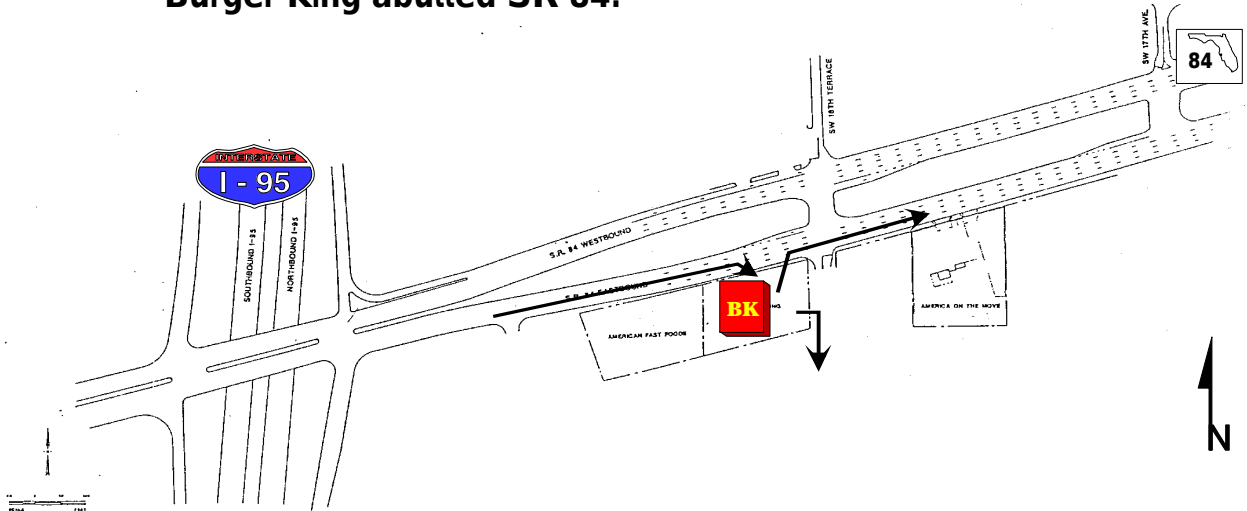
FDOT v. Lakewood Travel Park, Inc., **580 So. 2d 230 (4th DCA)**,
rev. denied **592 So. 2d 680 (Fla. 1991)**

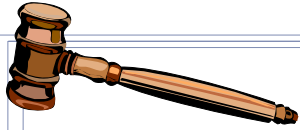
BURGER KING

Broward County

BEFORE

- Prior to reconstruction
Burger King abutted SR 84.

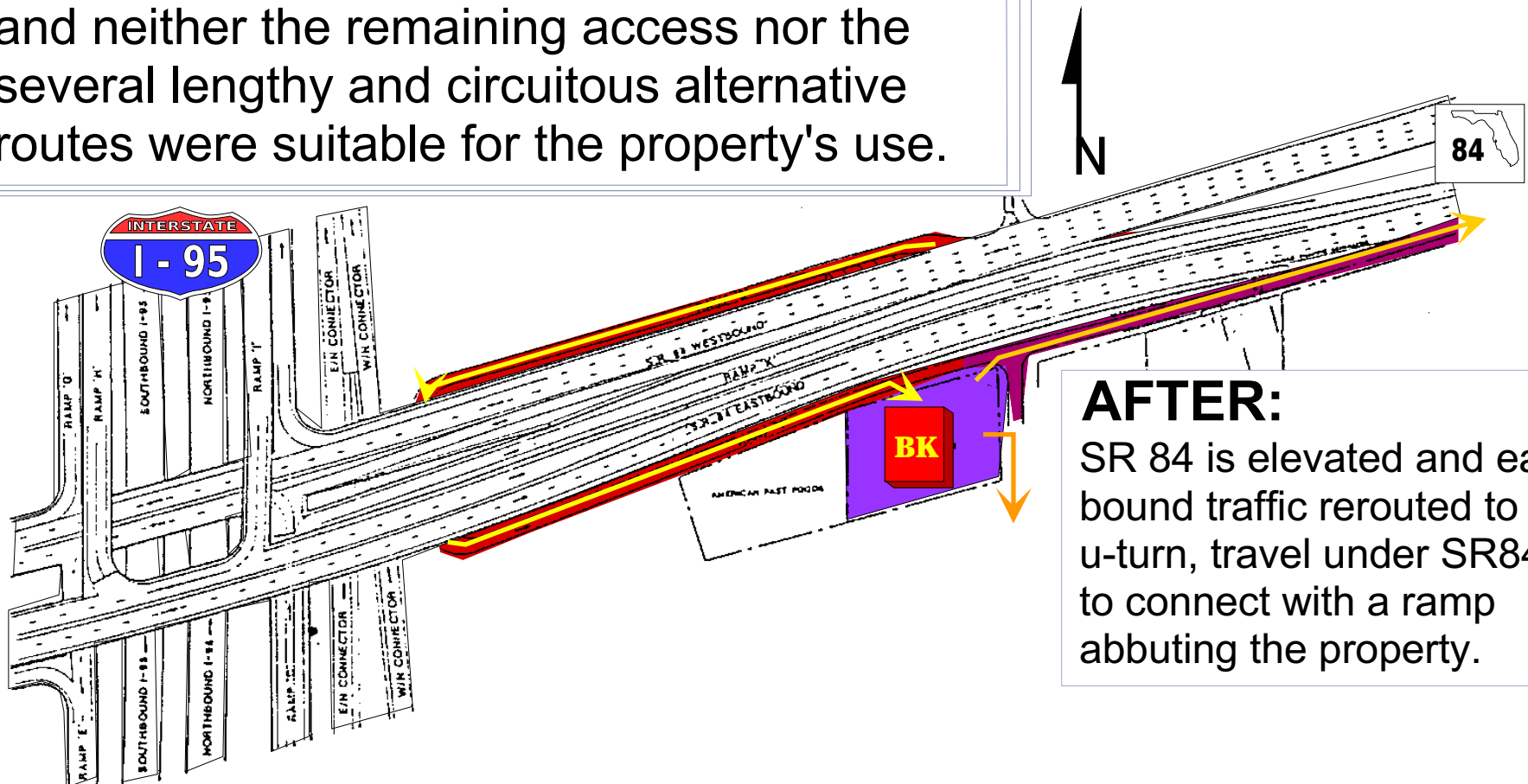




COURT:

The appellate court affirmed without opinion. The trial court had determined that right of access had been substantially diminished and neither the remaining access nor the several lengthy and circuitous alternative routes were suitable for the property's use.

BURGER KING



AFTER:

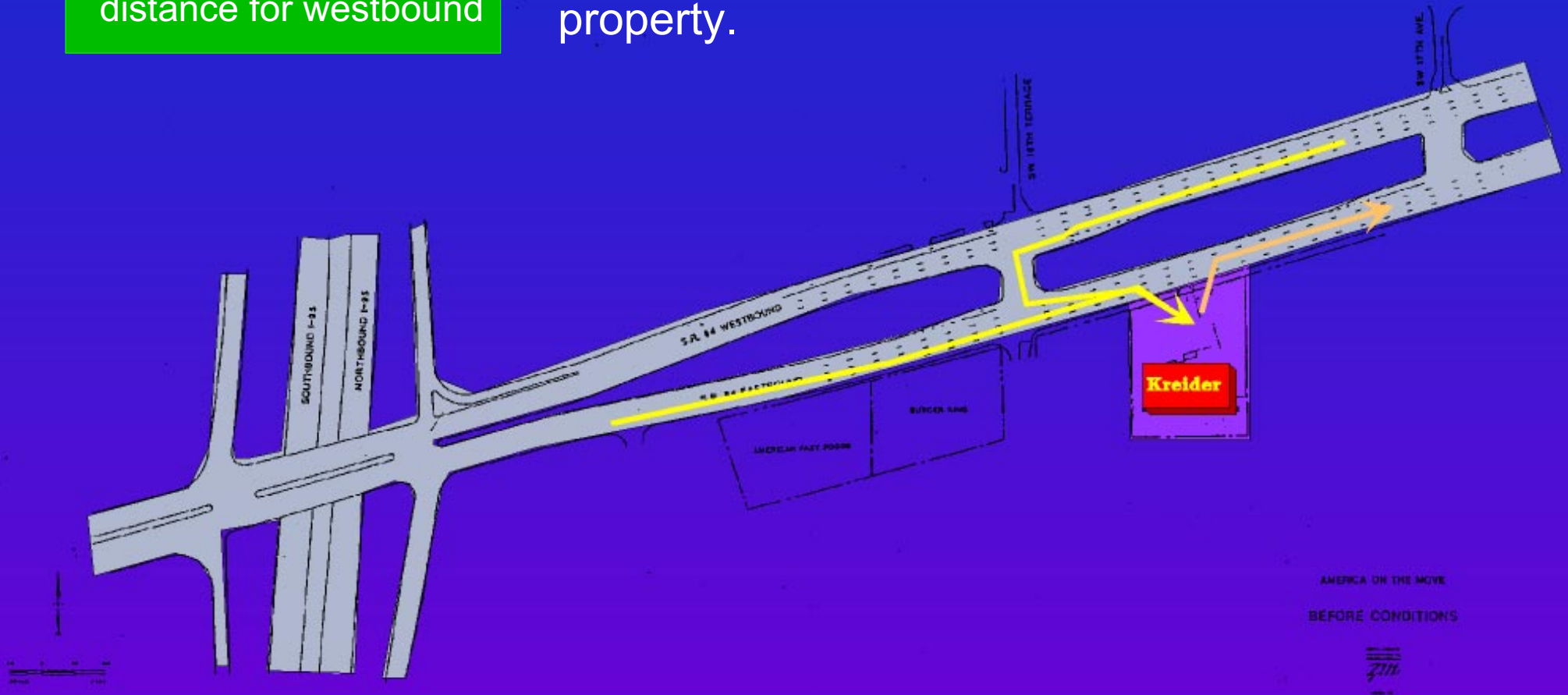
SR 84 is elevated and east-bound traffic rerouted to u-turn, travel under SR84 to connect with a ramp abutting the property.

KREIDER

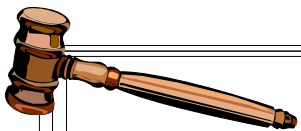
BEFORE:

Direct access to
eastbound traffic;
u-turn within short
distance for westbound

Reconstruction elevated SR 84 several feet
above Kreider's truck/rv rental business which
included a new one way service road & a
concrete retaining wall between SR 84 and the
property.

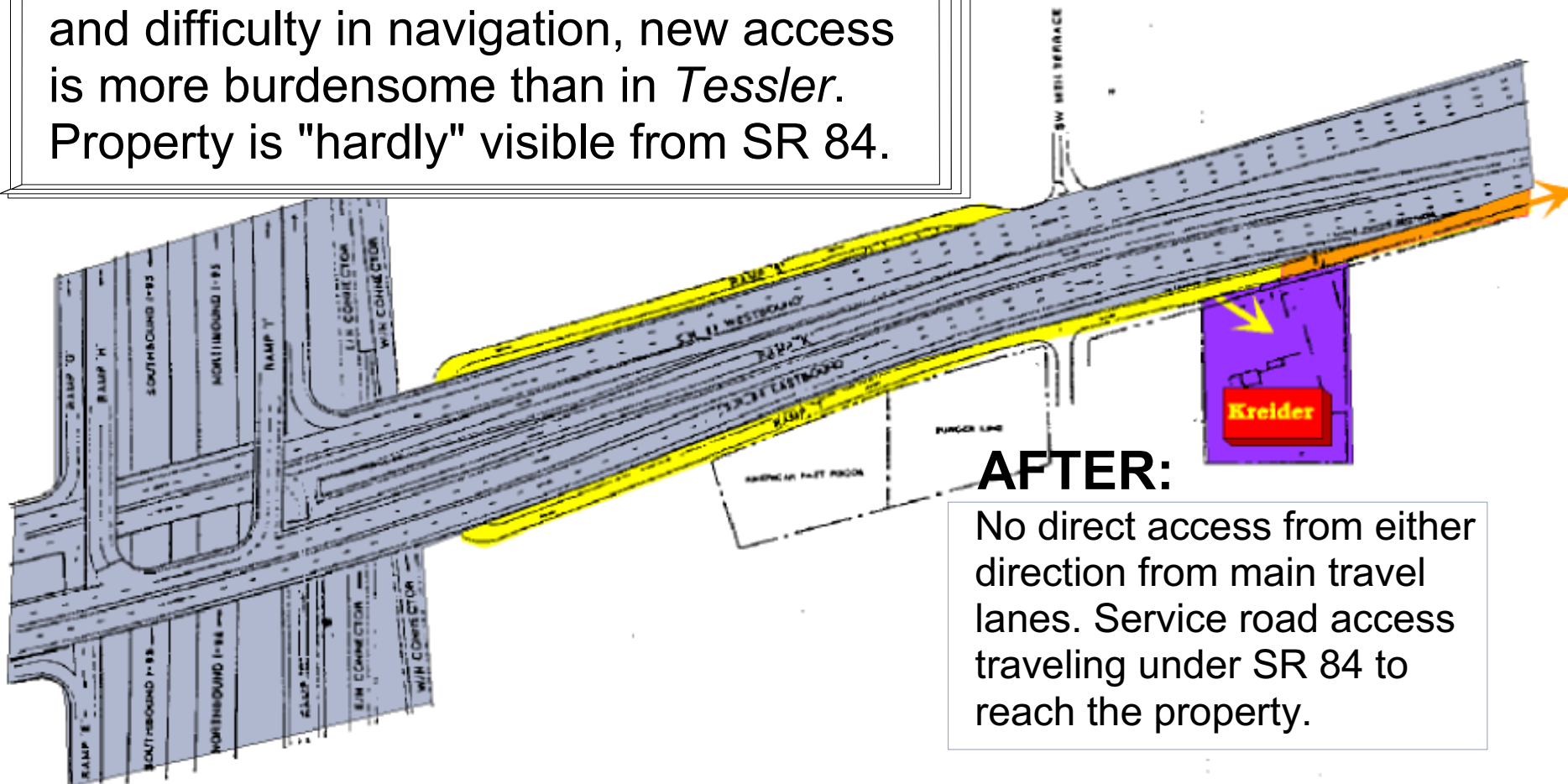


KREIDER



COURT:

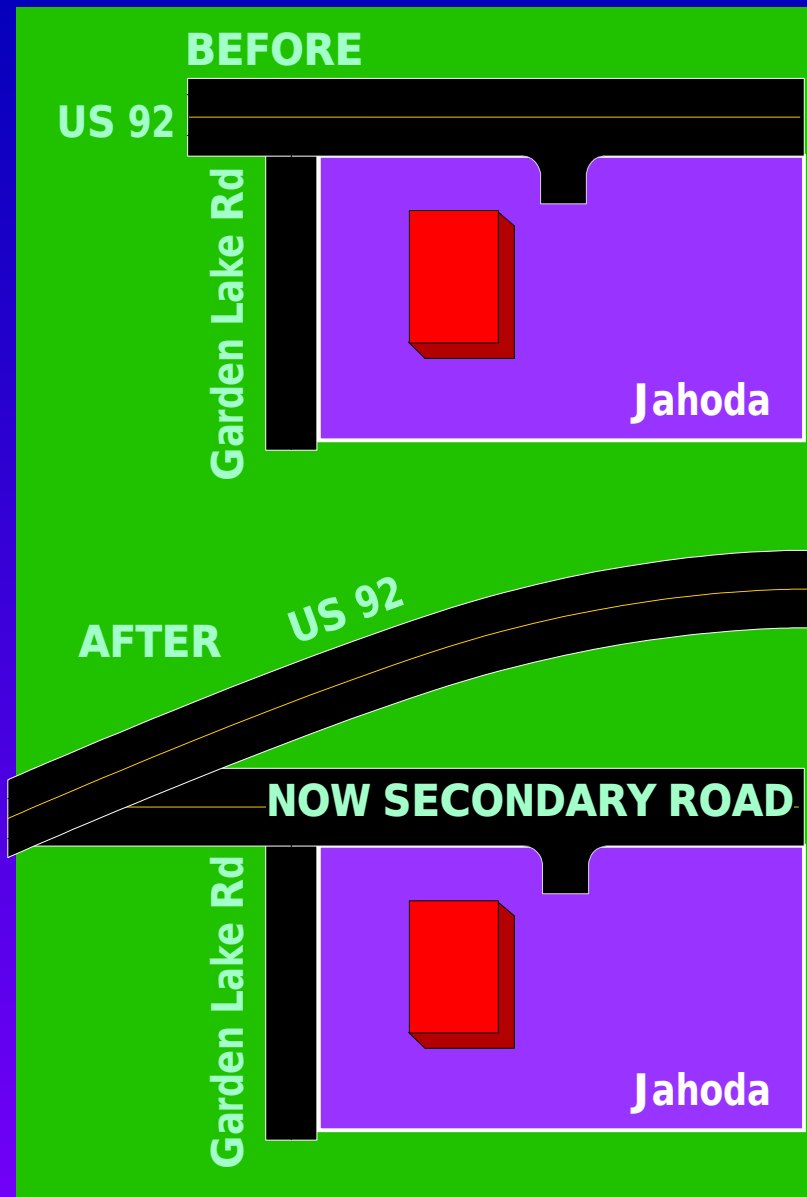
Right of direct access was substantially diminished. Measured by time, distance, and difficulty in navigation, new access is more burdensome than in *Tessler*. Property is "hardly" visible from SR 84.



AFTER:

No direct access from either direction from main travel lanes. Service road access traveling under SR 84 to reach the property.

FDOT v. Kreider, (Fla. 4th DCA 1995)
(Rehearing and request for certification pending based upon *Rubano*)



JAHODA

- The Department realigned US92 away from Jahoda's property



COURT: No person has a vested right in the maintenance of a public highway in any particular place.

COURT: The State owes no duty to any person to send public traffic past his door

Jahoda v. State Road Department, 106 So. 2d 870 (Fla. 2nd DCA 1958)

NEW TESTAMENT BAPTIST CHURCH

- Church planned small expansion.
- City Ordinance required landowner to dedicate right-of-way for future frontage road.
- Church also challenged the county's access spacing requirements.



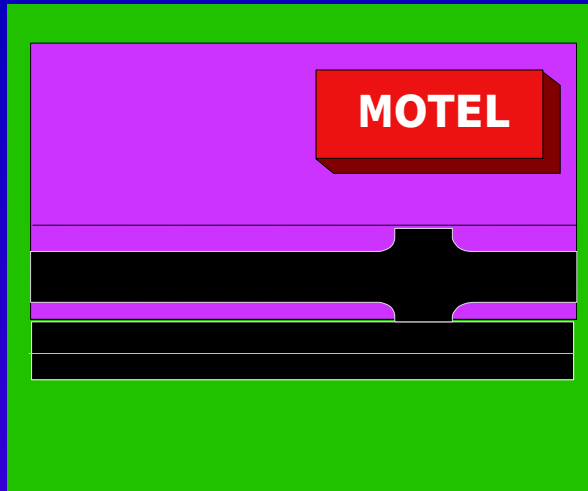
dedication for
frontage road



COURT: No relationship between church's expansion and need for frontage road. Dedication requirement did not meet "RATIONAL NEXUS" test.

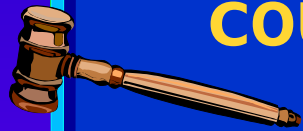
COURT: Upheld direct access to road could be limited to every 330' or 660' and that would not be a taking.

Lee County v. New Testament Baptist Church, **507 So. 2d 626 (2d DCA)**,
rev. denied **515 So. 2d 230 (Fla. 1987)**



BUDGET INNS

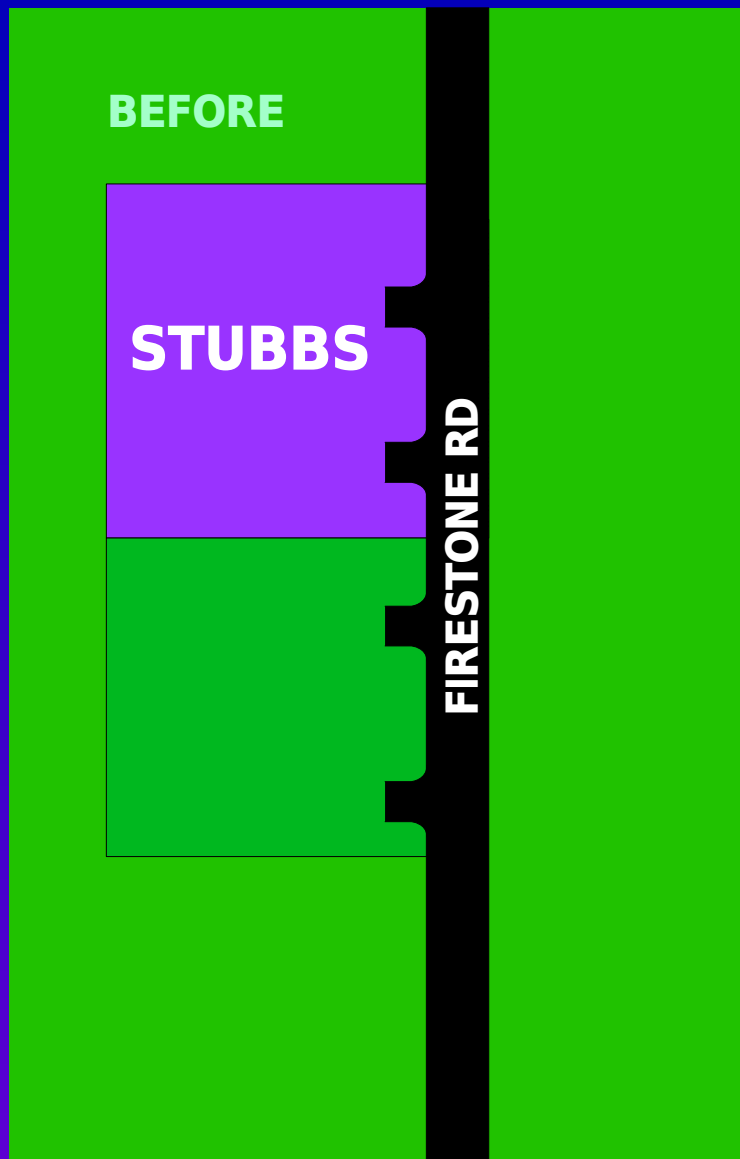
- County required Budget Inns to dedicate right-of-way
- **AND** build road as condition of granting a building permit.



COURT: No present need or reasonably immediate future need for road. Does not meet Rational Nexus Test.

- ◀ The county must show that the proposed development will make an impact on the abutting roads so as to require immediate improvements to those roads.
- ◀ This rational nexus test would also include the requirement for exclusive turn lanes (right or left).

Hernando County v. Budget Inns of Florida, Inc., **555 So. 2d 1319 (Fla. 5th DCA 1990)**



STUBBS

- FDOT built I-295 in Jacksonville.
- During Construction FDOT closed portion of Firestone Rd. serving Stubbs' property.
- Built new bridge for access.
- FDOT condemned portions of Stubbs property.
- There was a physical taking of property.
- No similar physical taking from neighbors.

DOT v. Stubbs, 285 So. 2d 1 (Fla. 1973)

AFTER

STUBBS

3 blocks

New bridge to
provide access

Neighbors still had
access to Firestone
Rd portion not
vacated

STUBBS



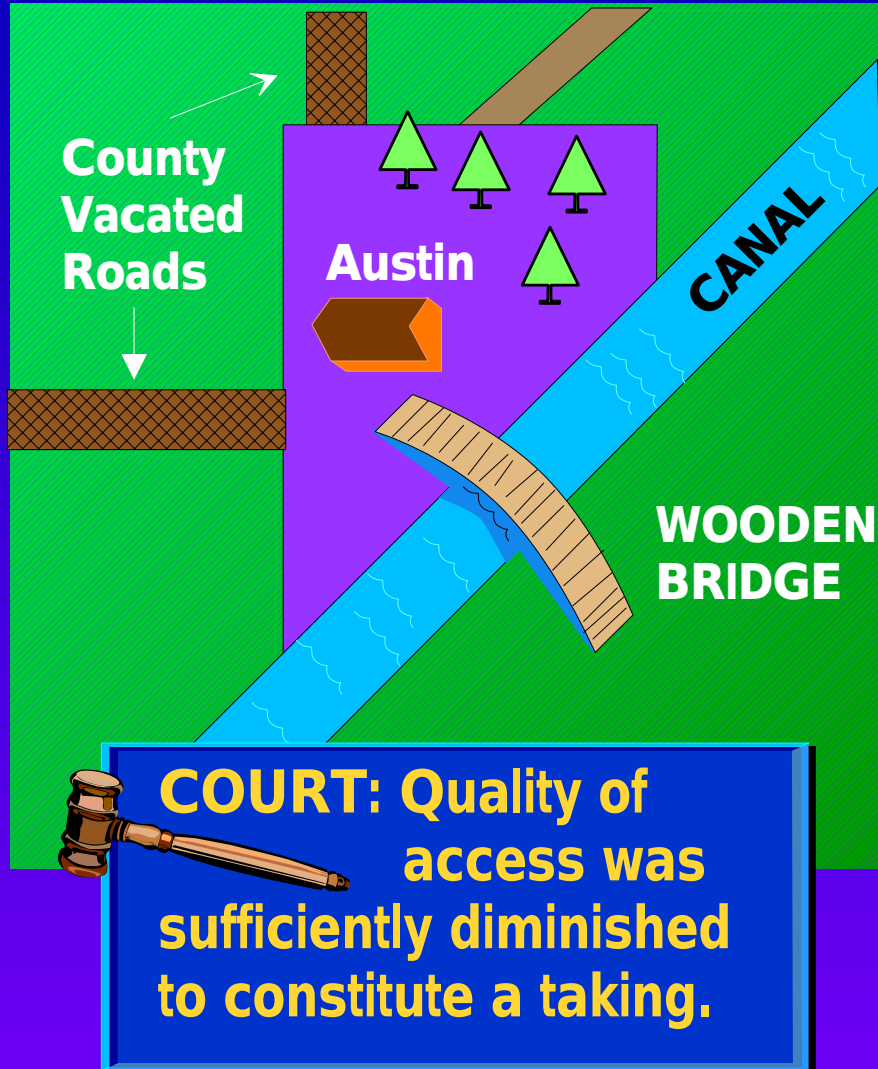
COURT: A taking of access occurred because the loss of access was substantial. Access "does not presently include a right to traffic flow even though commercial property might very well suffer adverse economic effects as a result of a diminution in traffic."



Where some right of access is available, court will ask whether there is a "substantial diminution" in access as a direct result of the "taking." If not, damages are nominal.

DOT v. Stubbs, 285 So. 2d 1 (Fla. 1973)

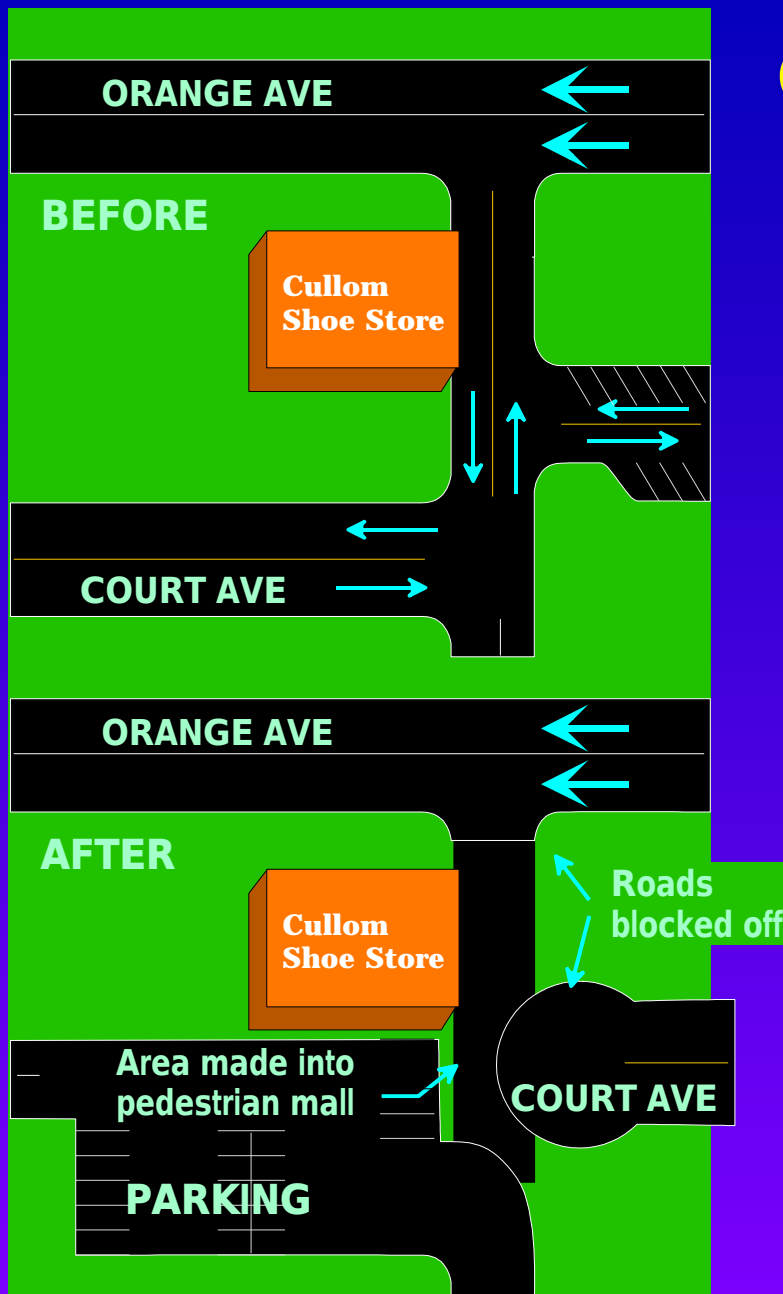
AUSTIN



- County vacated 2 dirt roads leading to Austin's property.
- Remaining access by unimproved platted road or across old wooden bridge.
- Bridge not adequate for fire & garbage trucks.
- Use of unimproved platted road would require cutting trees and new driveway.

To be compensated for loss of access, landowner must demonstrate "Special Damages" which are not in common with the general public.

Pinellas County v. Austin, 323 So. 2d 6 (Fla. 2d DCA 1975)



CULLOM

- City blocked off two streets.
- City constructed Pedestrian Mall.
- Cullom's parking & direct vehicular access were lost.



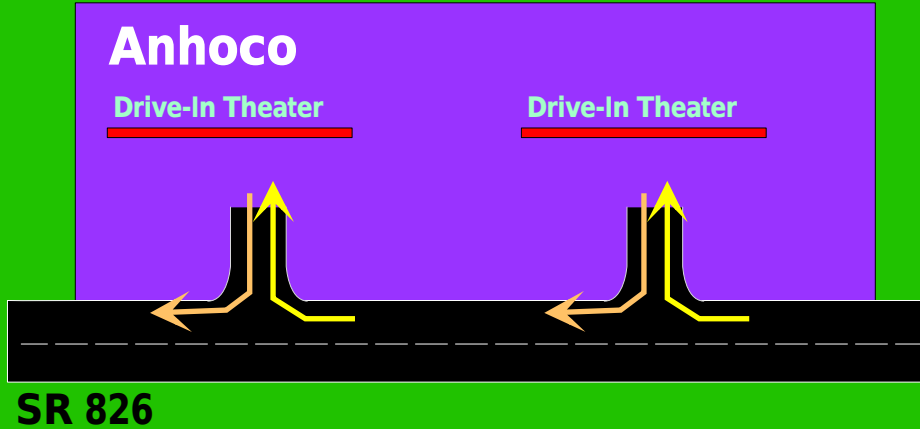
COURT: A taking did not occur. Still had access to their property and the access had not been "seriously diminished."



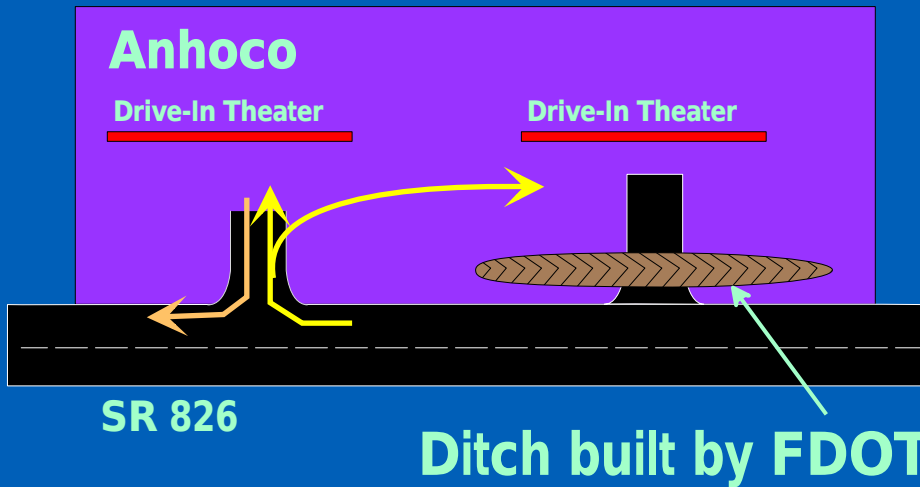
Perhaps the fact this was downtown where pedestrian access was prevalent affected this decision.

City of Orlando v. Cullom, **400 So. 2d 513** (5th DCA) rev. denied **411 So. 2d 381** (Fla. 1981).

BEFORE



DURING



ANHOCO

- Property was Drive-In Theater.
- FDOT Changed SR826 into an expressway.
- FDOT built a ditch destroying direct access.
- Built service road later.

Anhoco v. Dade County,
144 So. 2d 793 (Fla. 1962)
Reaffirmed in FDOT v. Rubano,
20 Fla. L. Weekly S286 (Fla. June 22, 1995);
FDOT v. Gefen,
636 So. 2d 1345 (Fla. 1994)

DURING

Anhoco

Drive-In Theater

Drive-In Theater

SR 826

AFTER

Anhoco

Drive-In Theater

Drive-In Theater

Frontage Road

EXPRESSWAY

MEDIAN

ANHOCO



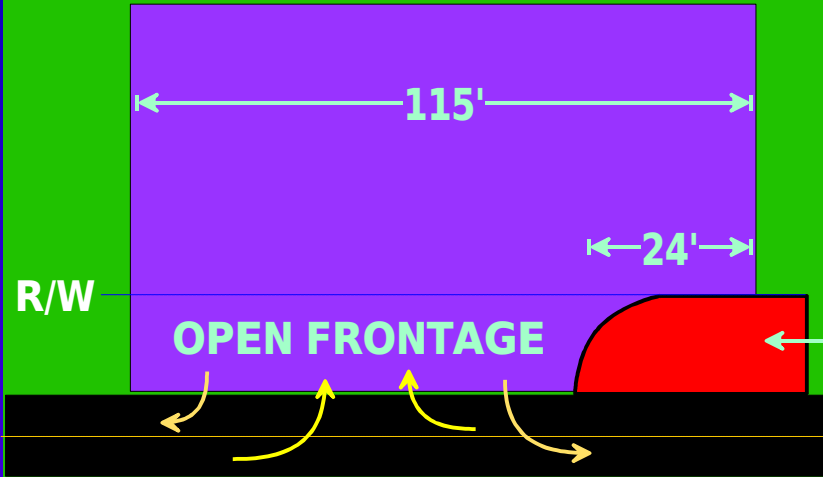
COURT:

A temporary taking was found and damages awarded for the period of time when the service road was not constructed.

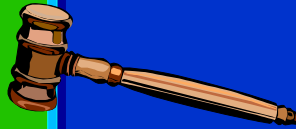
Anhoco v. Dade County,
144 So. 2d 793 (Fla. 1962)
Reaffirmed in FDOT v. Rubano,
20 Fla. L. Weekly S286 (Fla. June 22, 1995);
FDOT v. Gefen,
636 So. 2d 1345 (Fla. 1994)

AWBREY

- Panama City built lift station on right of way blocking 24' of Awbrey's access.



LIFT STATION & GUARDRAIL



COURT: Improvements constructed by government impairing access to the street do not amount to a taking unless an access is "seriously" disturbed or destroyed.

Awbrey v. City of Panama City Beach, 283 So. 2d 114 (Fla. 1st DCA 1973)

CAPITAL PLAZA

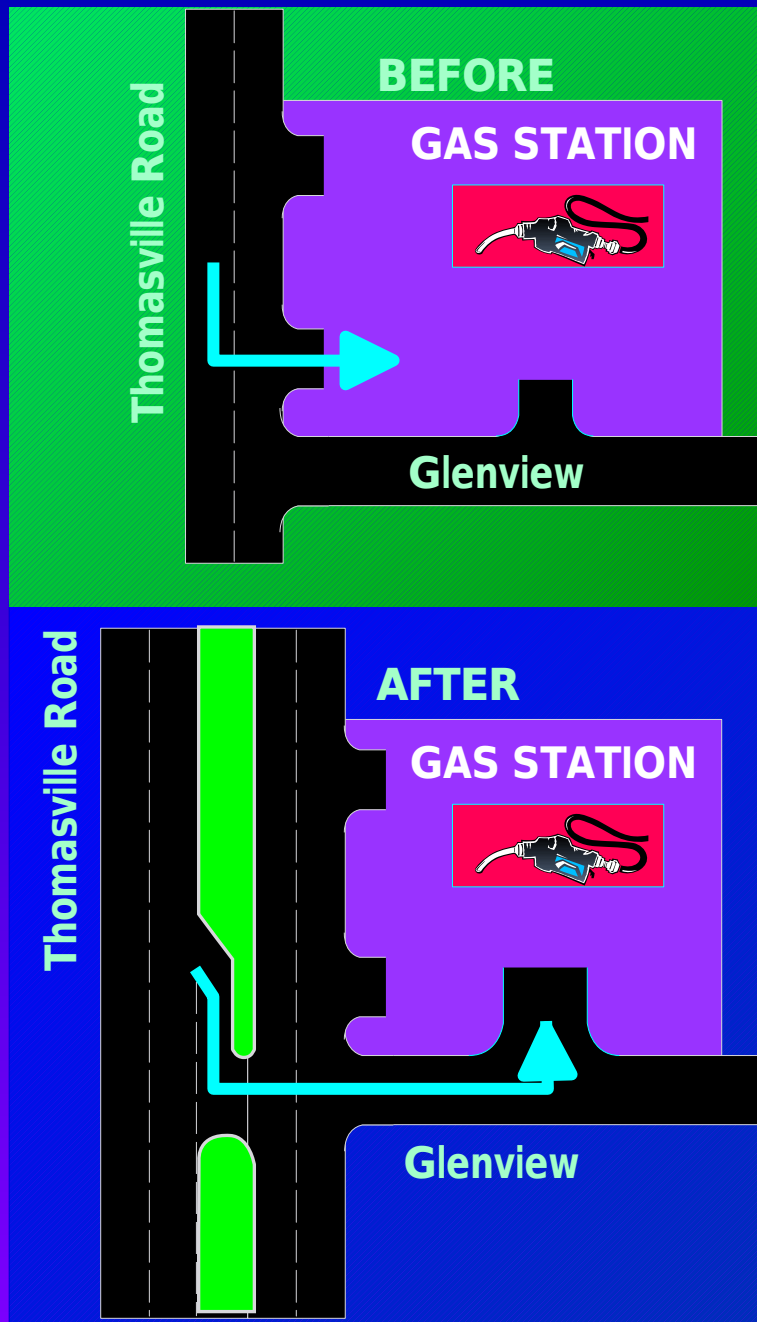
- FDOT improved Thomasville Road from 2 lane undivided to multilane divided road with restrictive median.
- FDOT purchased right-of-way from property.
- No left turn directly into service station.



COURT: A taking did not occur.

- ↔ Landowner has no property right in the continuation or maintenance of traffic flow past his property. Impairment of traffic flow is not recoverable.

DOT v. Capital Plaza Inc., **397 So. 2d 682 (Fla. 1981)**

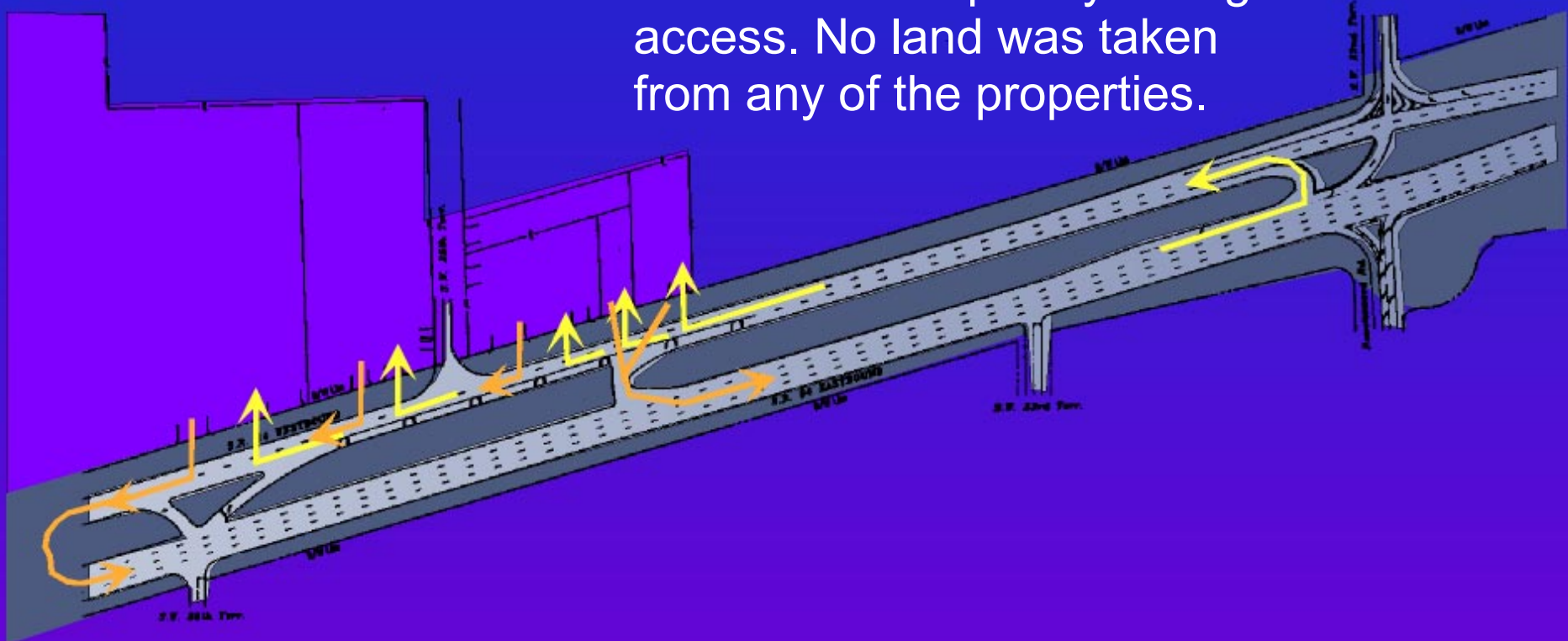


RUBANO

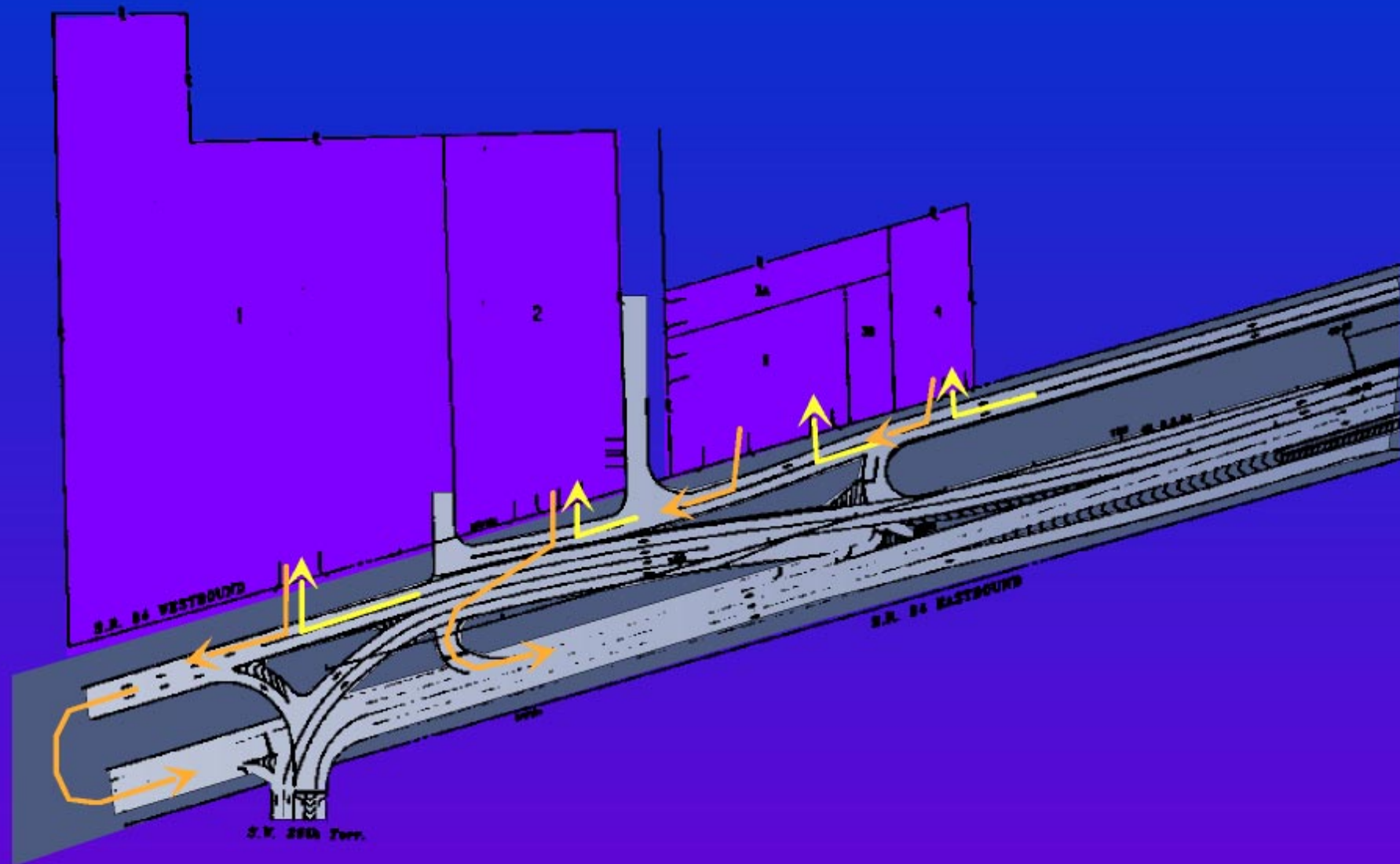
BEFORE:

Access to SR 84

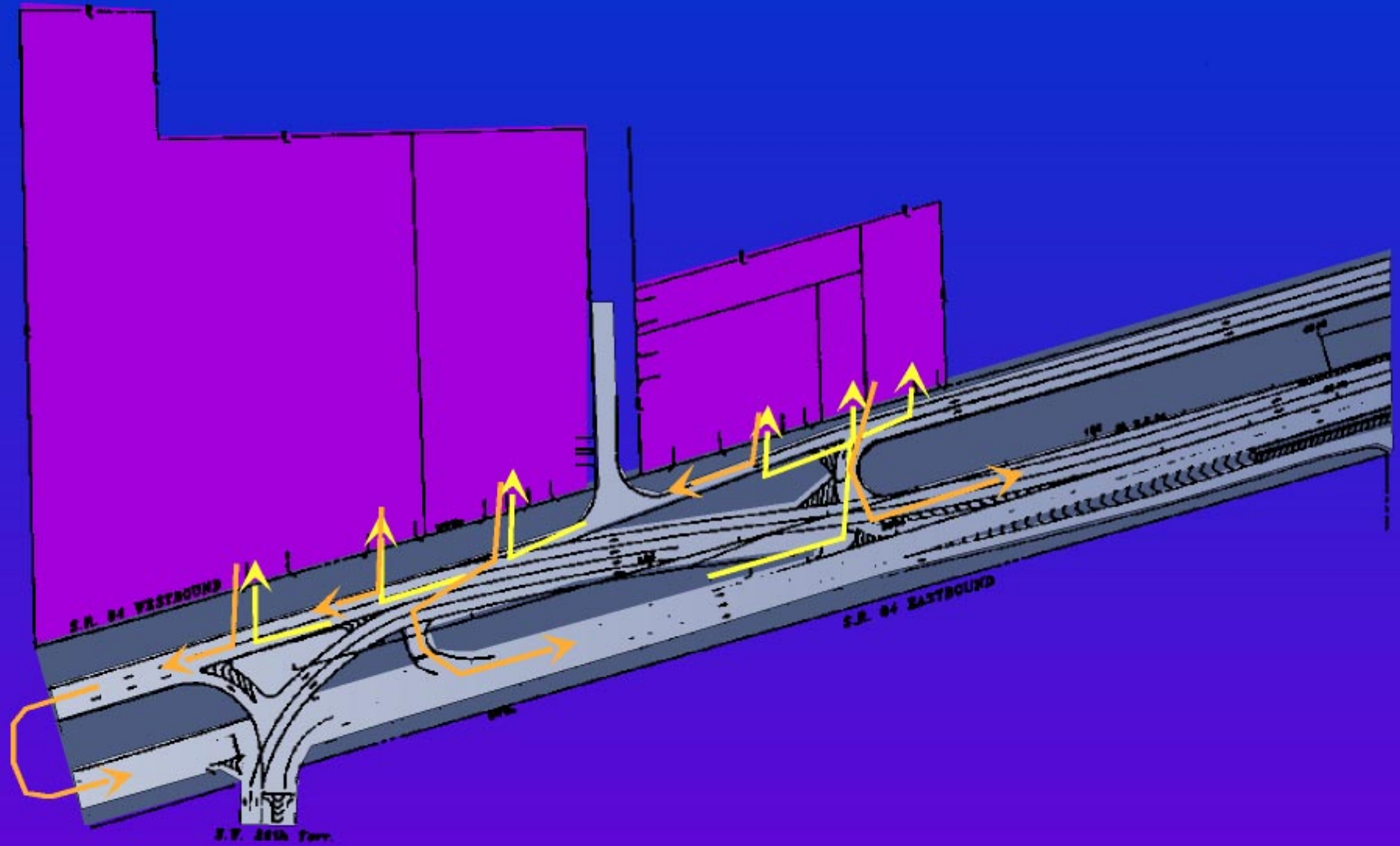
Property owners claimed that the five phases of construction which included temporary placement on service road and closure of nearby median openings constituted temporary takings of their access. No land was taken from any of the properties.



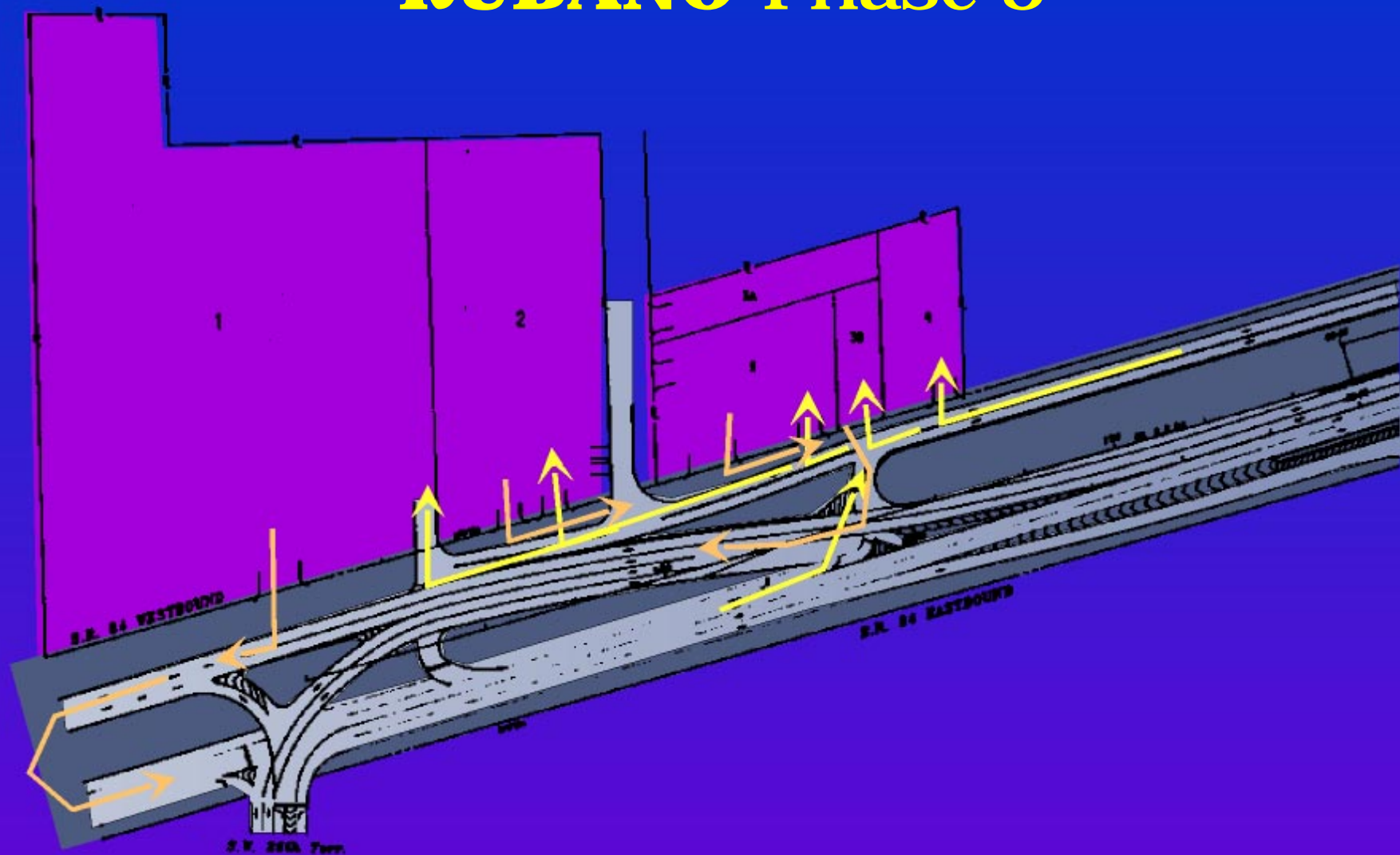
RUBANO Phase 1



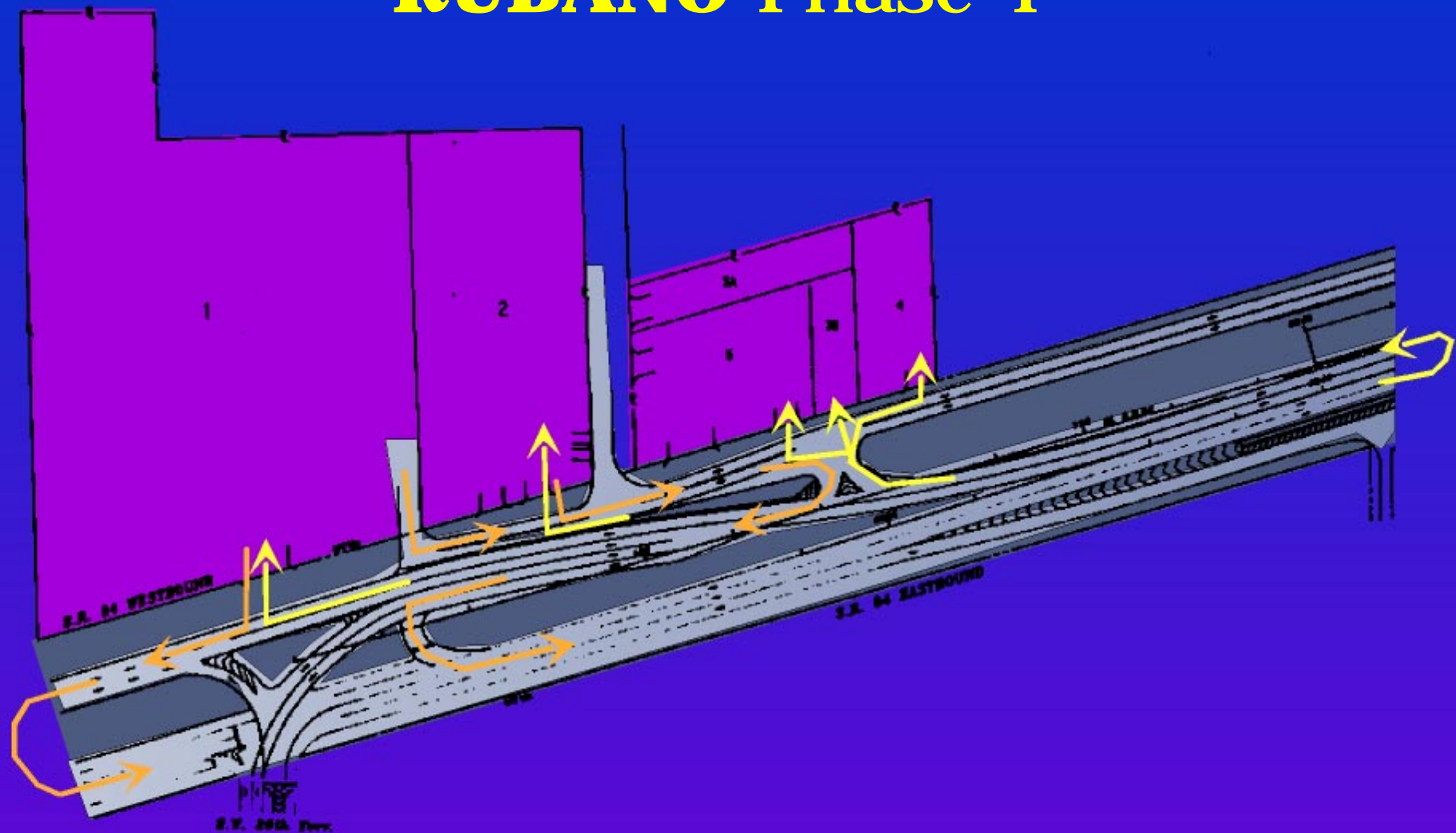
RUBANO Phase 2



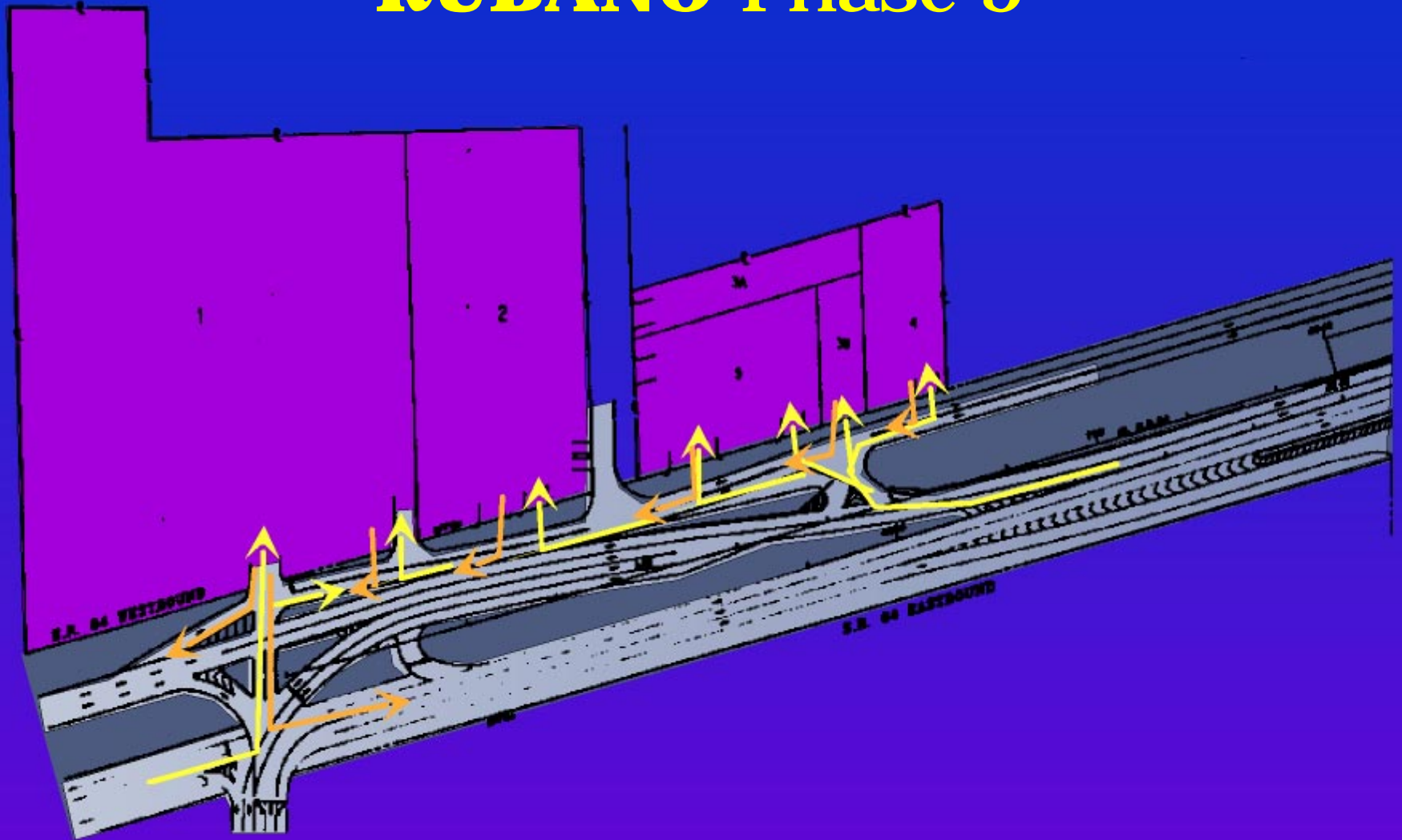
RUBANO Phase 3



RUBANO Phase 4



RUBANO Phase 5

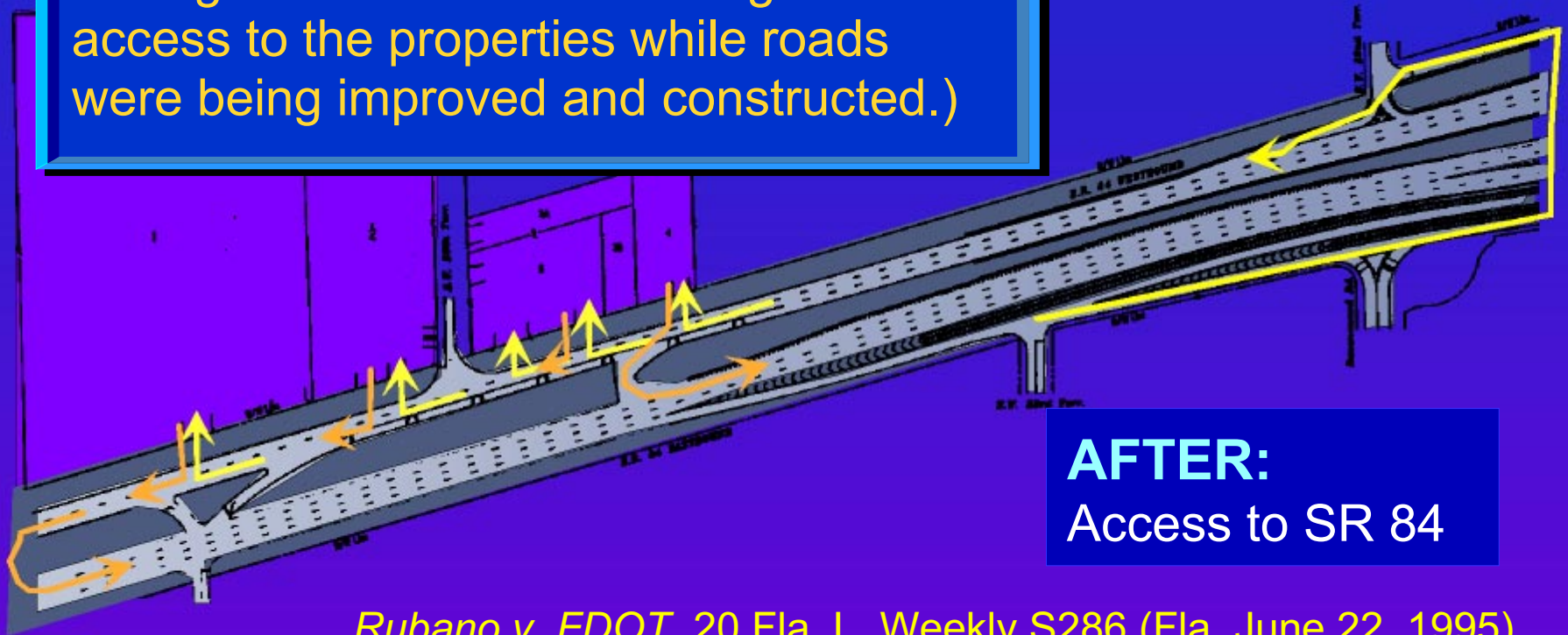




COURT:

The Florida Supreme Court determined there had been no compensable taking by the construction activities of FDOT. (The trial court had concluded otherwise, finding there had been a taking of access to the properties while roads were being improved and constructed.)

RUBANO



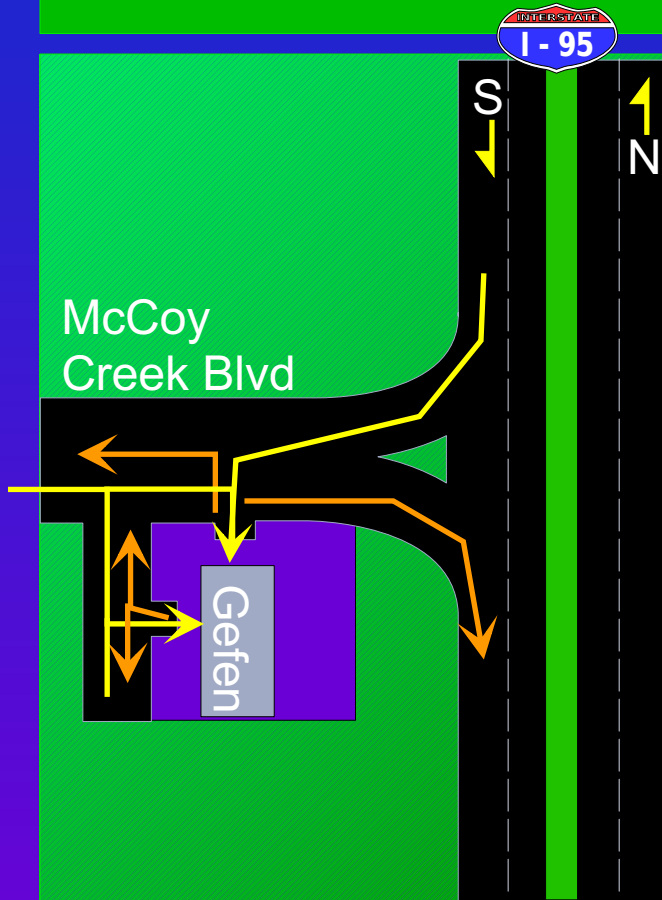
AFTER:

Access to SR 84

Rubano v. FDOT, 20 Fla. L. Weekly S286 (Fla. June 22, 1995)

BEFORE:

Ingress and egress from I-95 to road abutting Gefen's property.

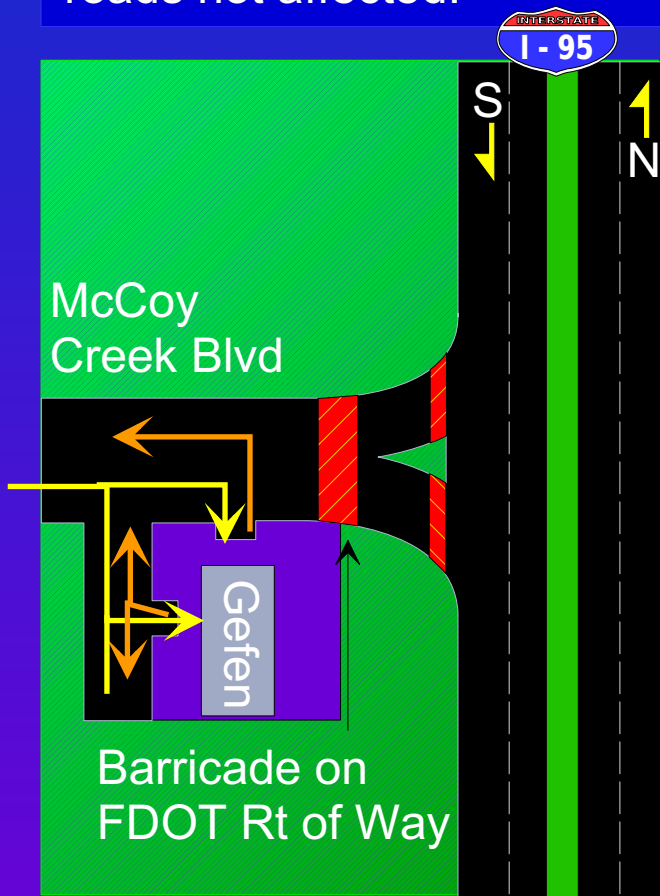


GEFEN

- Property leased to automotive business.
- I-95 entrance and exit ramps at McCoy Creek Blvd were closed.
- Gefen's access to roads abutting her property was not impacted.
- FDOT argued that there is no vested right to traffic flow even though commercial property might suffer adverse economic affects. A taking under *Tessler* had not occurred because no impact upon abutter's easement.

AFTER:

No Interstate ingress or egress at McCoy Creek Blvd. Access to abutting roads not affected.



GEFEN

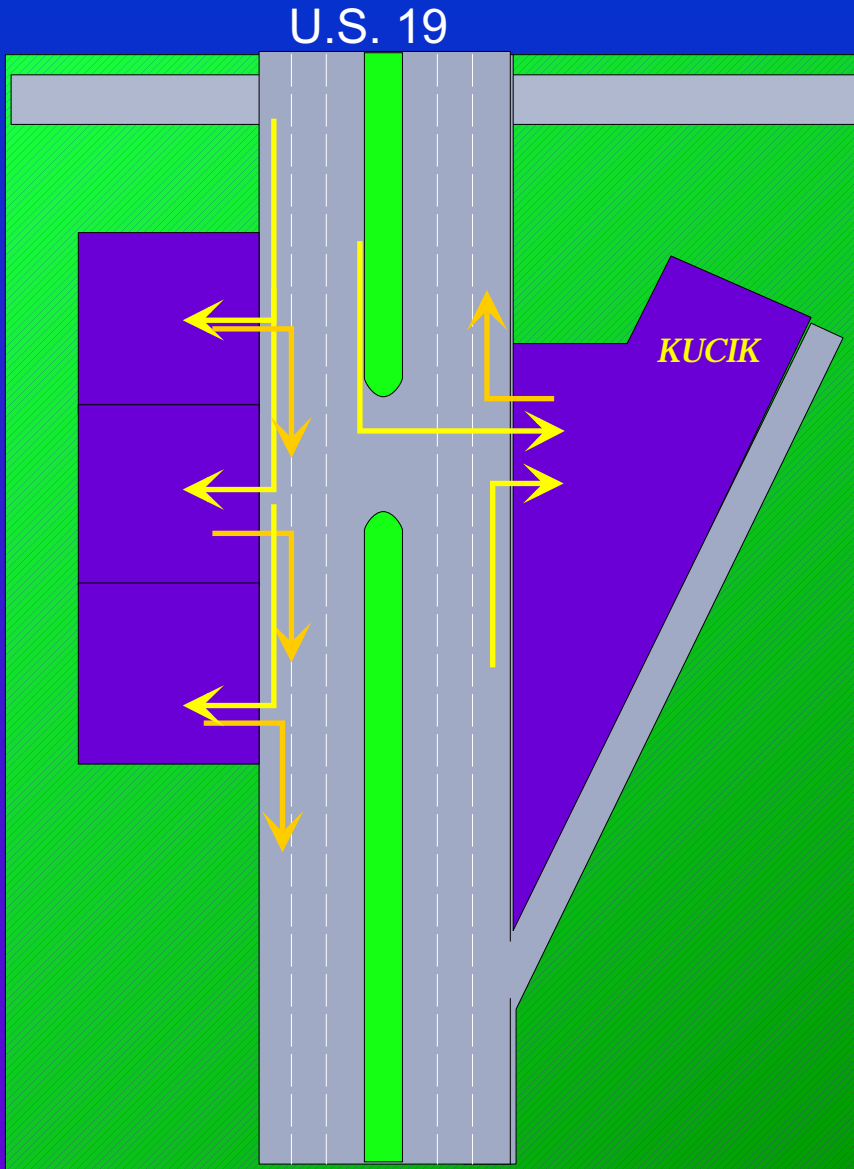


COURT:

No compensable taking where access to an interstate highway from a local street fronting the property is closed and no access to the property from abutting streets has been affected.

Citing to *State Road Dep't v. Chicone*, 158 So. 2d 753 (Fla. 1963) and *Dade County v. Still*, 377 So. 2d 689 (Fla. 1979) which held that a condemning authority cannot take advantage of condemnation blight, the court would not allow the closure to devalue the property when at a later date the FDOT plans to take a portion or all of the property.

Gefen v. FDOT, 636 So. 2d 1345 (Fla. 1994)
(Disapproving *FDOT v. Lakewood Travel Park, Inc.*,
580 So. 2d 320 (Fla. 4th DCA 1991)).



KUCIK

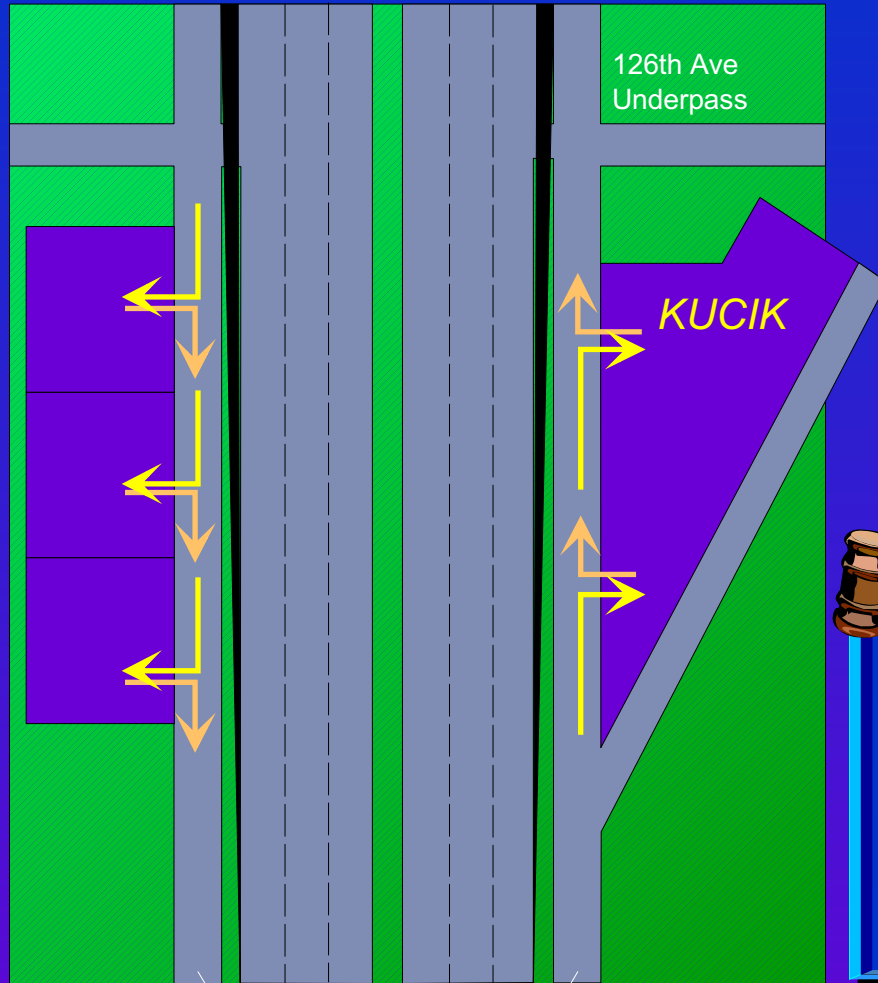
BEFORE:

Access to frontage road
at grade with U.S. 19

Construction elevated U.S. 19
above the properties.

FDOT v. Kucik, (June 1995)

U.S. 19



frontage roads

KUCIK

AFTER:

Access to frontage road.
U.S. 19 elevated.



COURT:

The trial court has determined that the FDOT's actions constitute a taking. The case is being appealed to Fla. 2d DCA.

FDOT v. Kucik, (June 1995)

FORTUNE FEDERAL

- **FDOT sought to acquire land for a road widening project in Pinellas County. It was most cost effective to acquire Fortune Federal's entire parcel at a cost of \$480,000, because business damages would amount to \$2,000,000 to acquire only the part physically necessary for the project.**



Property owners have only a statutory right to business damages. There is no constitutional right to business damages but only a right to full compensation for the fair market value of the property taken. The less costly acquisition of right of way was indeed a "public purpose."

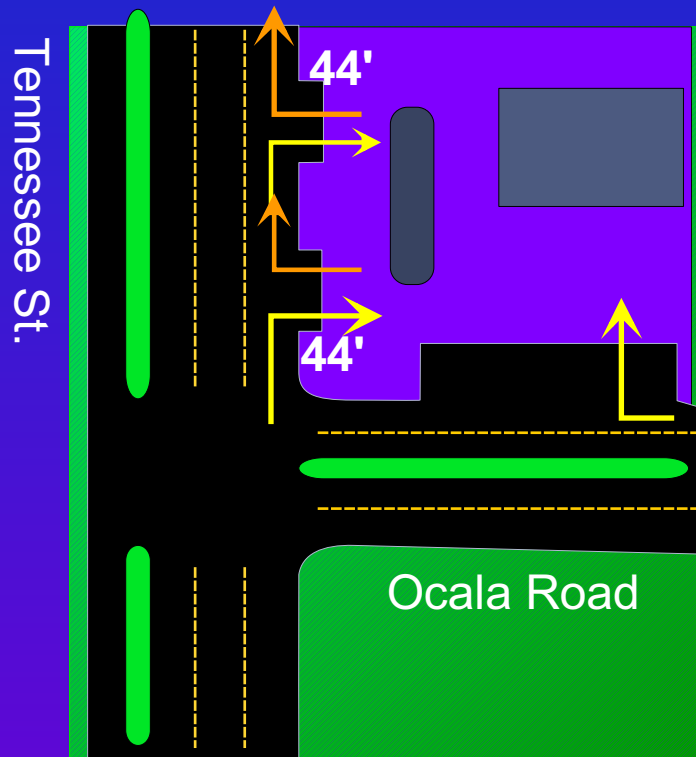


Where the acquisition of access rights is necessary to serve a public purpose, it is wise to determine whether a whole take might be a less costly alternative.

FDOT v. Fortune Federal Savings and Loan Association, **532 So.2d 1267 (Fla. 1988)**

BEFORE:

Two 44' driveways onto Tennessee Street.



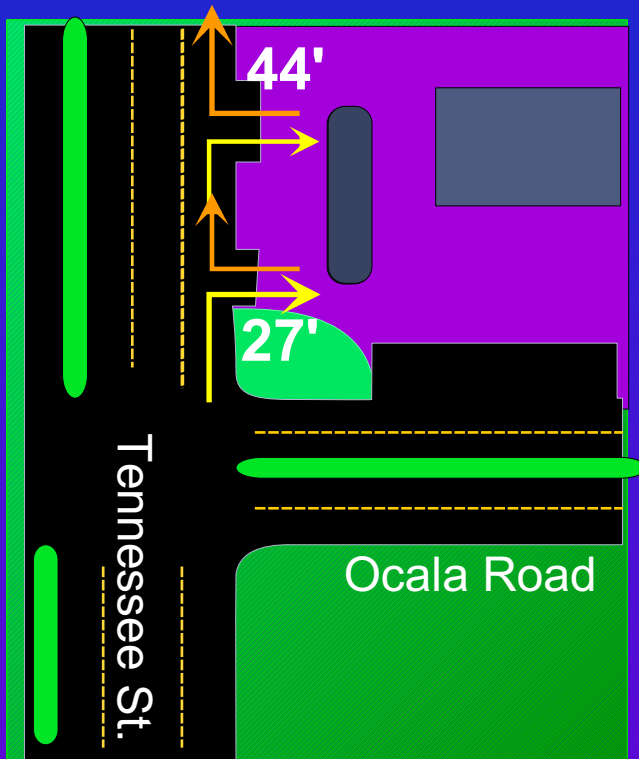
WEAVER OIL

- Weaver operates high volume gas and convenience store at Tennessee Street and Ocala Road.
- City took 14' wide strip along Ocala Road.
- City constructed grass traffic control island on its right of way & reduced one Tennessee St. driveway from 44' to 27'.
- City disputed claim to business damages because no taking of land occurred.

Weaver Oil v. City of Tallahassee,
647 So. 2d 819 (Fla. 1994)

AFTER:

One 44' driveway and one 27' driveway onto Tennessee Street.



WEAVER OIL



COURT:

Modification of driveway access was a proper exercise of the police power.

Driveway width reduction was not related to Ocala Road take.

There was no taking of property as a result of the change of access.

Statutory business damages may not be recovered unless such business damages are caused by a partial taking of land.

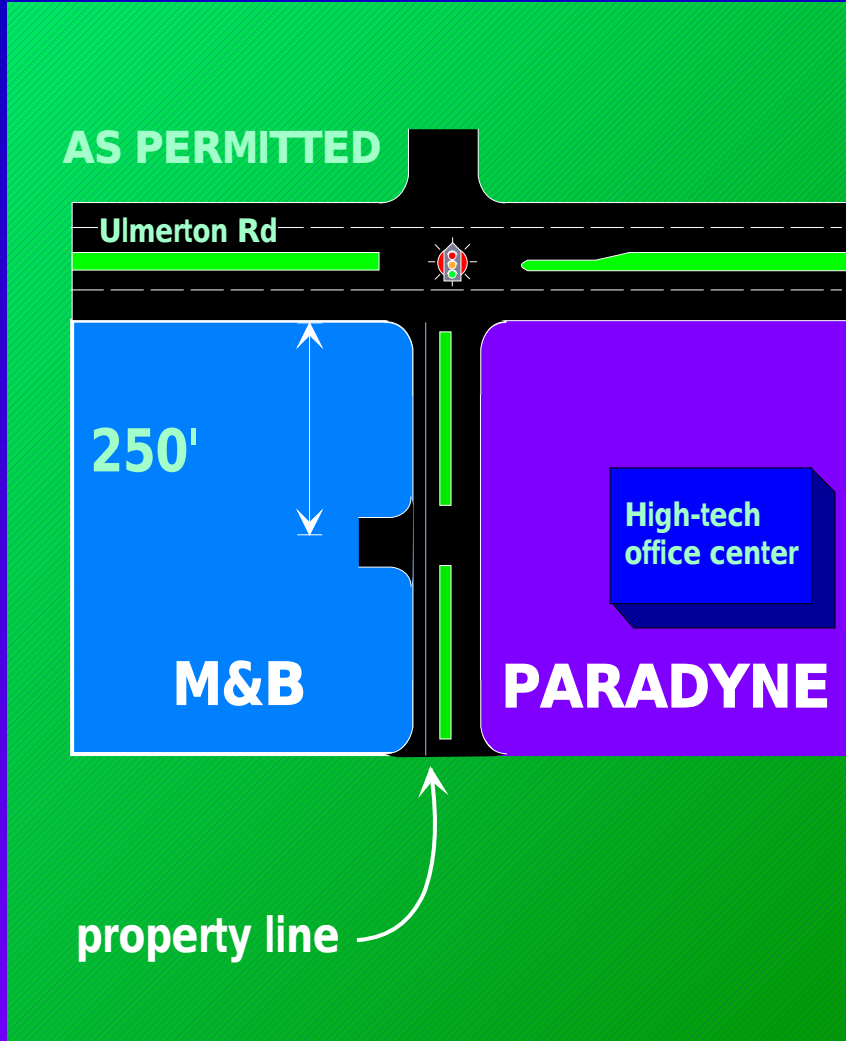
Weaver Oil v. City of Tallahassee, 647 So. 2d 819 (Fla. 1994)

LEGAL CONSIDERATIONS

PARADYNE

**An Access Management
(Permits) Case**

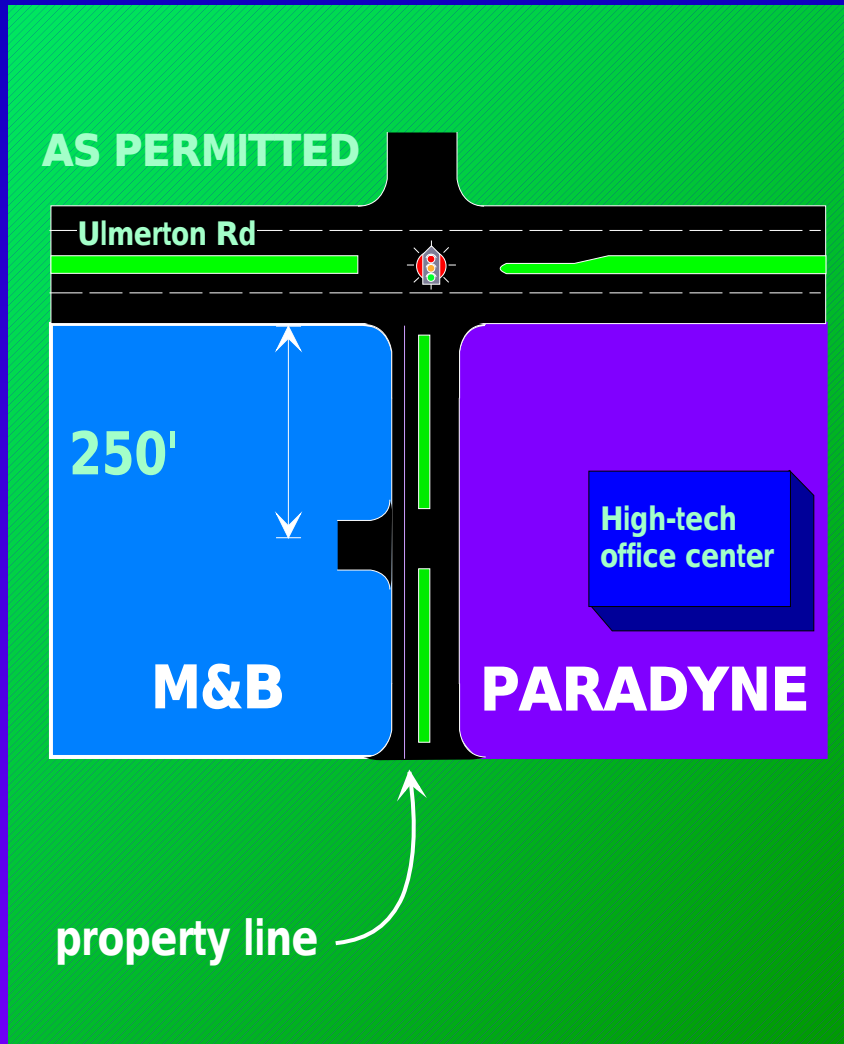
PARADYNE



- Paradyne obtained permit in 1981.
 - Only one median cut would be provided for safety reasons.
 - Permit required joint access.
- Paradyne agreed in the permit to provide joint access with M&B (through a company holding an option to build shopping center.)
- When the option was dropped, Paradyne refused to deal with M&B owner.
- As constructed, connection only provided access to Paradyne.

Paradyne Corp. v. DOT, 528 So.2d 921 (1st DCA) rev. denied 536 So.2d 244 (Fla. 1988)

PARADYNE

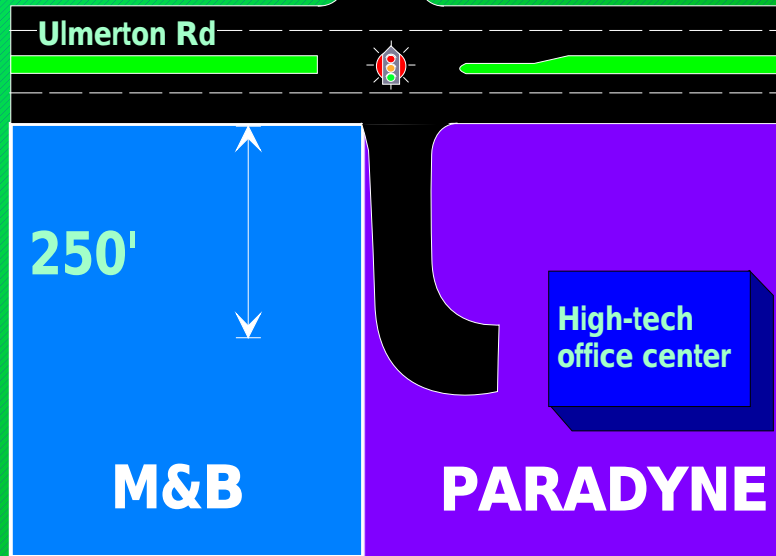


- FDOT revoked Paradyne's connection permit & required Paradyne to submit a redesign.
- Paradyne failed to submit redesign - Paradyne's property would be subjected to redesign by FDOT to include 250' drive to be used both by Paradyne and M&B.
- Redesign required Paradyne to allow M&B to use Paradyne's property

Paradyne Corp. v. DOT, **528 So.2d 921 (1st DCA)** rev. denied **536 So.2d 244 (Fla. 1988)**

PARADYNE

AS BUILT BY
PARADYNE



COURT: FDOT has the right to ask for (but not force) joint access.

COURT: FDOT has the right to revoke permit because connection was not constructed as permitted.

COURT: Cannot make a property serve someone else unless in furtherance of a public purpose.

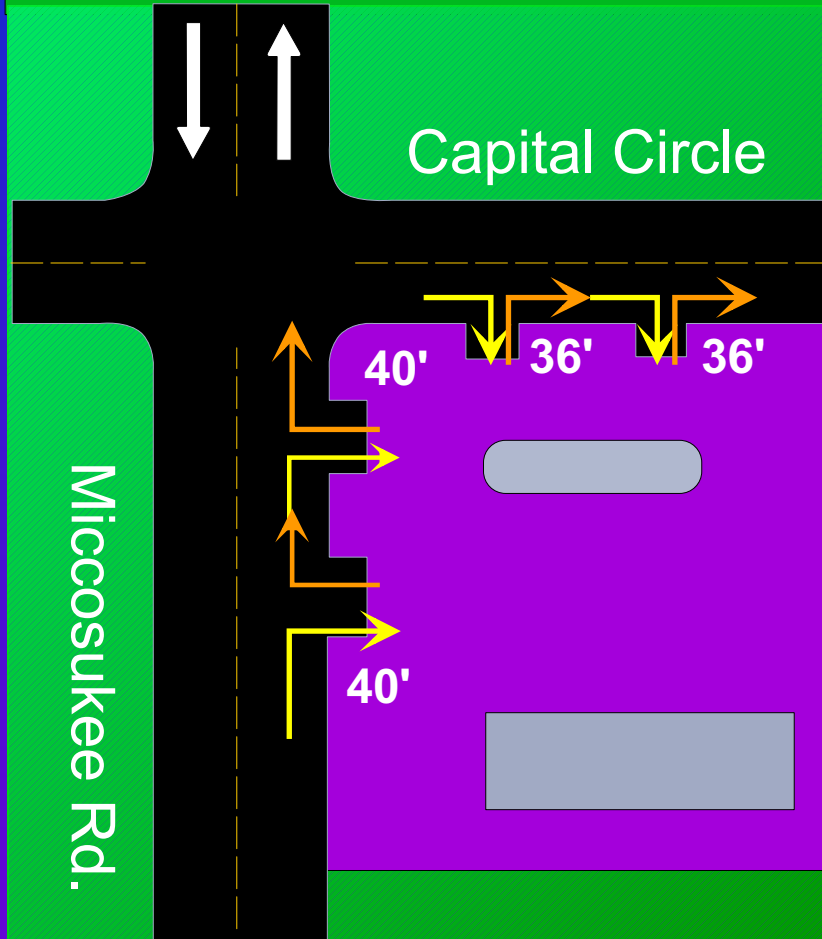


**FDOT does not have to permit access
if it would not be safe**

Paradyne Corp. v. DOT, **528 So.2d 921 (1st DCA)** rev. denied **536 So.2d 244 (Fla. 1988)**

BEFORE:

Two 40' driveways onto Miccosukee and two 36' driveways onto Capital Circle



DIXIE OIL

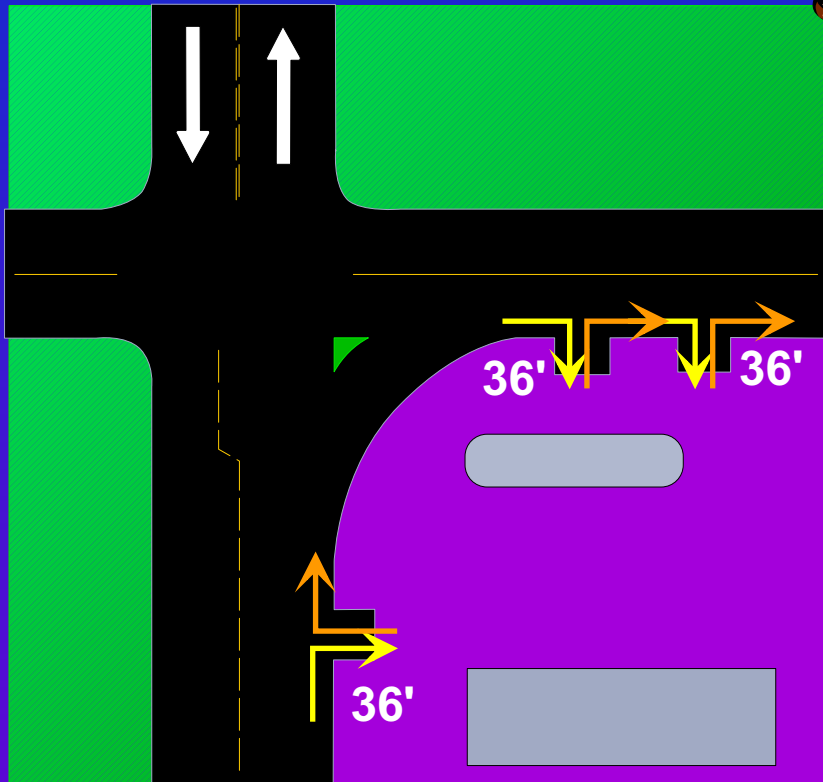
Frontage taken from Dixie along Capital Circle and the number of driveways reduced from 4 to 3.

Dixie received compensation for driveway reductions. Dixie's request for an administrative hearing on width reductions denied.

Dixie Oil v. FDOT, 20 Fla. L. Weekly 1623
(Fla. 1st DCA July 13, 1995)

AFTER:

Two 36' driveways onto Capital Circle and one 36' driveway onto Miccosukee Road



DIXIE OIL



COURT:

If evidence is introduced at the valuation trial on driveway width reductions, a property owner is not later entitled to an administrative hearing on the issue.

Court declined to reconcile condemnation powers with FDOT's regulatory powers under the Act.

Dixie Oil v. FDOT, 20 Fla. L. Weekly 1623 (Fla. 1st DCA July 13, 1995)

RACETRAC RULE CHALLENGE

Challenge to Department's proposed amendments to Rule Chapter 14-96, the Access Management Rule.

Main claim was medians and median openings must be considered "connections" for purposes of the Act, subjecting any FDOT action relating medians to Chapter 120 review.

RACETRAC RULE CHALLENGE



COURT:

Medians are separators between two directions of the travelled way, and are traffic control devices, **not** connections to the SHS.

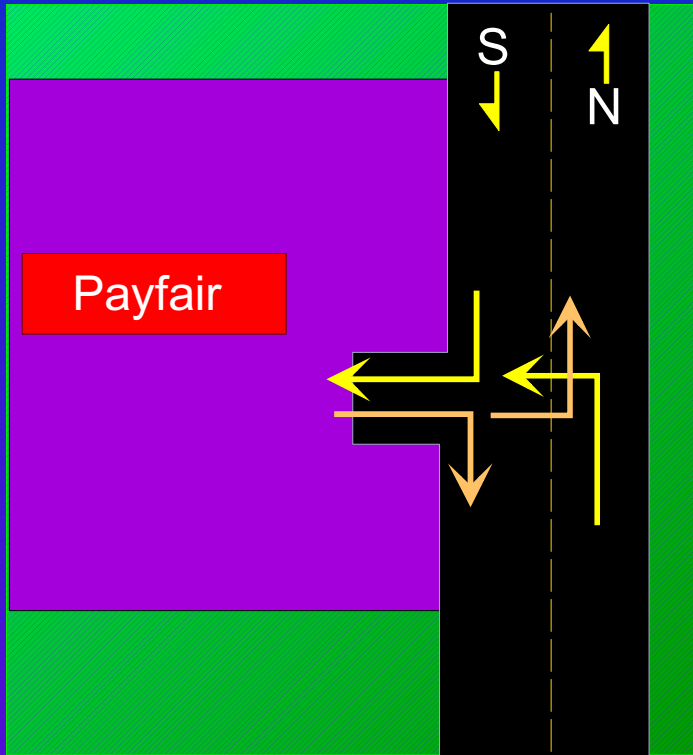
Notice of connection closures or alterations which occur during FDOT construction activities and which include an eminent domain phase, is sufficient.

The FDOT may make access design and permitting decisions to meet current and ***anticipated*** traffic needs of the roadway.

FDOT can alter or close a connection when it identifies a potential safety or operational problem.

The primary consideration must be the safe and efficient operation of the state highways.

HACK CORP



BEFORE:

Direct access to both northbound and southbound lanes of U.S. 1

Widening of U.S.1 created 2 northbound and 2 southbound lanes separated by a restrictive median.

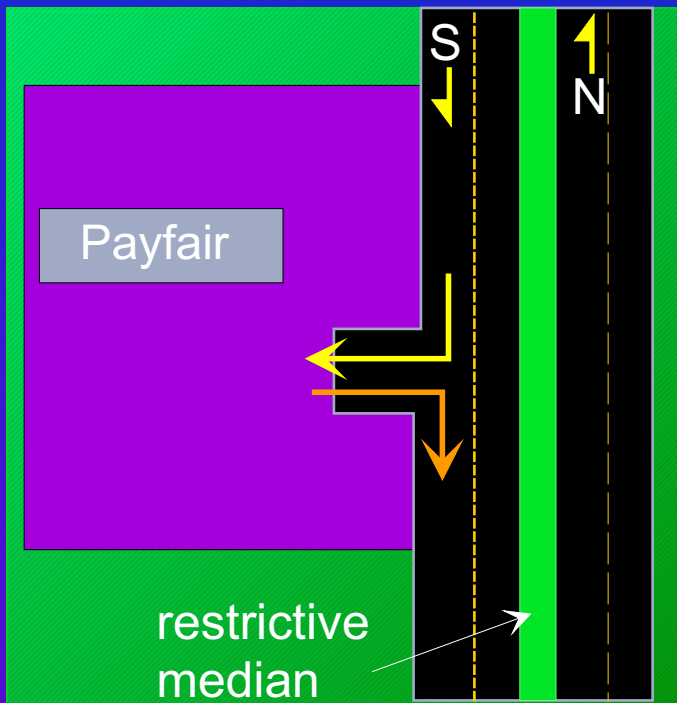
Department denied Payfair's request for a median opening or to replace the raised median with a painted median.

Hack Corp. v. FDOT, 637 So. 2d 14 (Fla. 3d DCA 1994).

HACK CORP

AFTER:

Direct access to only
southbound lanes of U.S. 1



COURT:

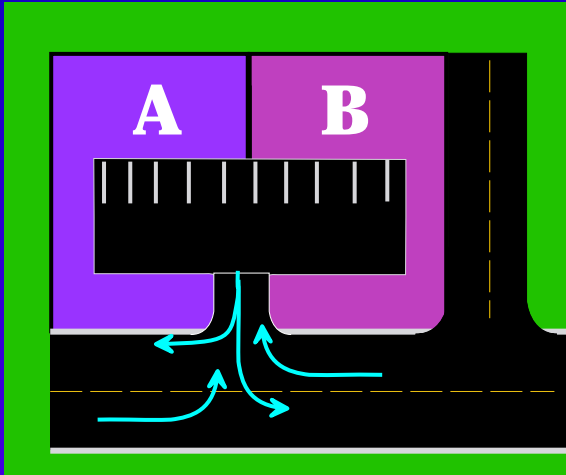
Appellate court affirmed without opinion.

Eminent domain principles applied in an administrative proceeding.

Payfair had standing under the Act to challenge denial of its request for median opening, but lacked standing to challenge the Department's design of the roadway.

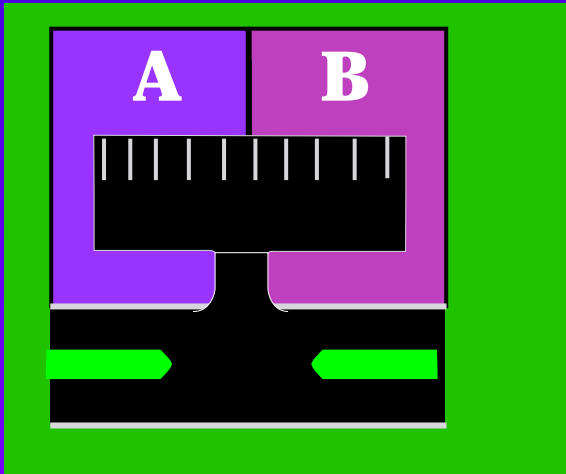
Hack Corp. v. FDOT, 637 So. 2d 14 (Fla. 3d DCA 1994).

JOINT DRIVEWAY ACCESS



Safe facilitation of additional turning movements

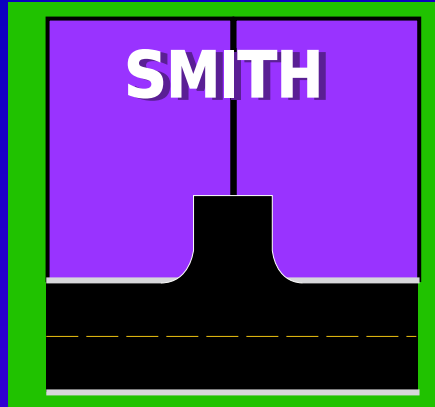
Property owners may agree to joint access in order to have more permitted turning movements from a shared driveway.



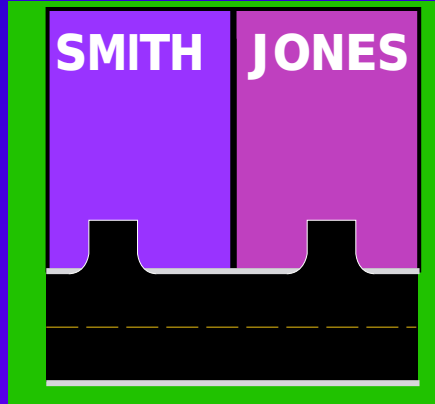
SHARED MEDIAN OPENING

Property owners may decide to join access to share a single median opening.

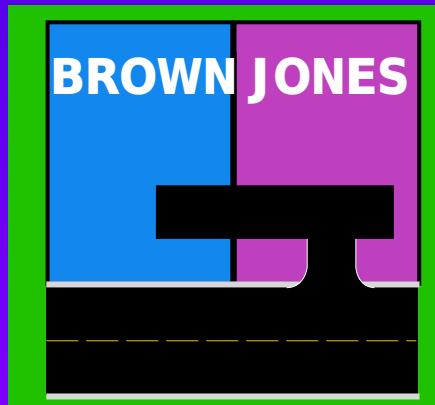
JOINT DRIVEWAY ACCESS



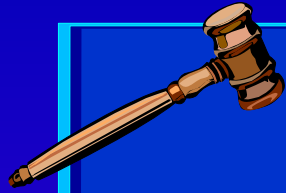
If subdividing and asking for access
DOT may condition permit on
providing future joint access.



Bonafide contract for sale from Smith
to Jones - cannot require joint access.

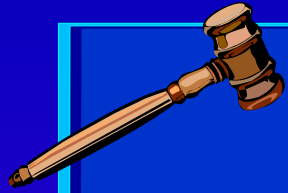


SMITH OWNER - leases to Brown and Jones
Where leasehold comes into existence
after Feb 13, 1991 (effective date of Rule 14-97)
FDOT can require joint access.



IMPORTANT LEGAL CONSIDERATIONS

- ↔ **All properties are entitled to reasonable access**
- ↔ **Remember rational nexus**
- ↔ **Keep good records of decisions and discussions**
- ↔ **Put decisions in writing when notifying the applicant**
- ↔ **Decisions based on safety concerns have the greatest likelihood of being upheld**
 - These should be documented and specific
- ↔ **If FDOT revokes a permit, the burden of proof is on the Department**



IMPORTANT LEGAL CONSIDERATIONS

- ◆ **There will never be one case that decides once and for all the dividing line between reasonable access and the use of police power. This line will ebb and flow throughout time.**